87-323 (1)

No.

Supreme Court, U.S.
FILED
AUG 24 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

VLADIMIR SOKOLOV, a/k/a VLADIMIR DMETRIVICH SOKOLOV, VLADIMIR SOKOLOV-SAMARIN, VLADIMIR SAMARIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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92 pp

QUESTIONS PRESENTED

1. Whether the Second Circuit Court of Appeals misconstrued the Government's burden of proving its case by clear, unequivocal, and convincing evidence when it failed to consider and apply the voluntary standard as set forth in Public Law 14 (65 Stat. 28) and the I.R.O. Constitution, Annex I, Part II, 62 Stat. 3051-52, in deciding that Sokolov illegally procured his visa by having assisted enemy forces, having participated in a movement hostile to the United States, and having advocated or assisted in the persecution of Jews.

2. Whether proof of materiality, as required under 8 U.S.C. Section 1451(a), and as defined by *Chaunt v. United States*, 364 U.S. 350, 81 S. Ct. 147, and restated in *Fedorenko v. United States*, 449 U.S. 490, 505 (1981), permits the Second Circuit Court of Appeals to base findings on inference, conjecture, or surmise, and to reduce the second standard or second prong of *Chaunt* to mere proof of denial of an occasion of an investigation potentially leading to discovery of other facts warranting denial of citizenship.

3. Whether the Second Circuit Court of Appeals erred in finding facts and an additional basis for denaturalization (*de novo*), not found by the District Court, to support its erroneous conclusion that a material misrepresentation was made in the procurement of naturalization.

4. Whether the District Court's denial of access to Sokolov's "A" file, and the Second Circuit Court of Appeals' failure to order access to the "A" file, resulted in a violation of the petitioner's constitutional right of due process, an unwarranted violation of petitioner's rights under Federal Rules of Evidence, Section 612, and a deprivation of rights created under the Freedom of Information Act, 5 U.S.C. Section 552 (1982).

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Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner, Vladimir Sokolov, a/k/a, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit, entered in the above entitled proceeding on March 24, 1987. Petitioner's petition for re-hearing was denied May 28, 1987.

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit

is reported at 814 F. 2d 864 (1987) and appears in Appendix A hereto.

The denial of a petition for re-hearing by the Court of Appeals for the Second Circuit, without modification of the opinion, appears in Appendix B hereto.

The opinion of the United States District Court, for the District of Connecticut, (Murphy, J.) as amended, is unreported, and appears in Appendix C hereto.

A memorandum of the United States District Court, for the District of Connecticut, (Murphy, J.) in response to a direction from the Court of Appeals for the Second Circuit, is unreported and appears in Appendix D hereto.

JURISDICTION

The judgment of the Court of Appeals affirming in part and remanding in part the judgment of the District Court denaturalizing the petitioner was entered on March 24, 1987. A petition for re-hearing was filed, and was denied without modification of the opinion on May 28, 1987. This petition for a writ of certiorari is filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

STATUTES INVOLVED

Section 340(a) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. Section 1451(a) provides for revocation of a naturalized citizen's order and certificate of naturalization if they "were procured by concealment of a material fact or by willful misrepresentation."

Section 10 of the Displaced Persons Act of 1948, Public Law 774 (62 Stat. 1009), as amended on June 16, 1950 by Public Law 555 (645 Stat. 219) provides in pertinent part

> "That . . . Any person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissable into the United States."

Section 13 of the Displaced Persons Act of 1948, Public Law 774 (62 Stat. 1009), provides in pertinent part that

> "No visas shall be issued under the provisions of this Act, . . . to any person who is or has been a member of or participated in any movement which is or has been hostile to the United States or the form of government of the United States, or to any person who advocated or assisted in the persecution of any person because of race, religion, or natural origin, or to any person who has voluntarily borne arms against the United States during World War II . . ."

Section 2(b) of the Displaced Persons Act of 1948, Public Law 774 (62 Stat. 1009), provides that "displaced person" means any displaced person or refugee as defined in Annex 1 of the Constitution of the International Refugee Organization (IRO), and who is the concern of the International Refugee Organization.

The IRO Constitution, Annex I, Part II, 62 Stat. 3051-52 (1946), provides that the following persons would not be considered the concern of the IRO:

> "1. War criminals, quislings and traitors.

2. Any other person who can be shown:

(a) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or

(b) to have voluntarily assisted the enemy forces since the outbreak of the Second World War in their operators against the United Nations."

Section 1 of Public Law 14 (65 Stat. 28), An Act to Clarify the Immigration Status of Certain Aliens, provides that the attorney general is authorized and directed to provide by regulations that the terms "members of" and "affiliated with" where used in The Act of October 16, 1918, as amended, shall include only membership or affiliation which is voluntary, and shall not include membership or affiliation which is or was solely (a) when under sixteen years of age, (b) by operation of law, or (c) for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.

STATEMENT OF THE CASE

In May of 1951, the petitioner, Vladimir Sokolov, hereinafter referred to as "Sokolov" applied to the Displaced Persons Commission for permission to immigrate to the United States from Germany. On May 21, 1951, he and his family filed an application for an immigration visa and alien registration with The American Consulate at Wentorf, Germany.

On June 27, 1951, Sokolov was admitted to the United States at New York. Thereafter, he resided in New York, and filed an Application to File Petition for Naturalization, form N-400, on September 13, 1956. A Petition for Naturalization, form N-405,

was filed on October 17, 1956. On April 19, 1957, Sokolov was interviewed by the I.N.S.

On May 21, 1957, Sokolov was naturalized, and issued a Naturalization Certificate, number 7943437.

On January 27, 1982 the United States of America commenced an action against Sokolov seeking to denaturalize him, and served a complaint on him containing eight counts.

Count I alleged that Sokolov's citizenship was illegally procured because his entry into the United States was unlawful due to his employment for propaganda units of the armed forces of Germany, and his advocacy of persecution of Jews and the imposition of Nazi rule throughout the world.

Count II alleged that Sokolov's advocacy of persecution of Jews constituted assistance to the enemy regime of Nazi Germany, and such conduct excluded the petitioner from the status of a Displaced Person.

Count III alleged that because Sokolov was ineligible for a visa, his admittance to the United States was unlawful, and his citizenship, therefore, was illegally procured.

Count IV alleged that Sokolov voluntarily assisted the enemy forces wherein (a) he was an editor of *Rech*, (b) he advocated the persecution of Jews, and (c) he advocated world domination by the Nazis.

Count V alleged that Sokolov willfully misrepresented his (a) participation in a movement hostile to the United States, (b) advocacy of persecution, and (c) employment with the newspaper, *Rech*, and that such was illegal procurement.

Count VI alleged that Sokolov's assistance in, and advocacy

of, persecution and murder of Jewish civilians made him ineligible for naturalization because he was not a person of good moral character, and thus, illegally procured his citizenship.

Count VII alleged the false testimony given by Sokolov establishes his lack of good moral character, wherein he concealed material facts, and made willful misrepresentation of material facts on his I-144 and Application for Naturalization.

Count VIII alleged Sokolov lied when he stated in form I-144 that he had not advocated and assisted in persecution, was not a member or participant in a movement hostile to the United States, and never gave false testimony to obtain benefits under the Immigration and Naturalization Act.

A trial on these issues was held before Senior District Judge Thomas F. Murphy in November, 1985, in the United States District Court for the District of Connecticut. On May 29, 1986, the trial court issued its memorandum opinion and by order amended the memorandum opinion on June 4, 1986. The court found that the petitioner procured both his Visa and Certificate of Naturalization illegally and by misrepresentation of material facts. The court did not specify which counts its findings applied to. On June 4, 1986, judgment was entered for the Government vacating the order of the United States District Court for the Eastern District of New York that granted Sokolov citizenship and cancelling his Certificate of Naturalization.

Sokolov appealed, and the United States Court of Appeals for the Second Circuit found in Sokolov's favor, finding that Sokolov had not procured his visa by means of misrepresentation of material facts. The court found that Sokolov did procure his certificate of naturalization by means of misrepresentation of material facts, but only after conducting a *de novo* review of the trial record and finding facts that were not to be found in the decision of the District Court.

The Court of Appeals ruled that a material misrepresentation was made in the procurement of naturalization, and based such ruling on a finding of facts beyond those found by the District Court. The District Court never found that Sokolov made any misrepresentation to the I.N.S. investigator; yet, the Second Circuit Court of Appeals did make that finding and concluded it was material.

In effect, the Second Circuit substituted its judgment for the District Court.

The Second Circuit also erred when it failed to rule that the petitioner had been deprived of his right to due process, and the right of cross-examination when the District Court precluded an essential area of cross-examination. Such error is further compounded when the court failed to conduct its own in-camera review of the "A" file. Instead, it asked the trial judge to reviev the file and advise if any of the documents therein would be of material significance. The District Court responded that a review was conducted, but there was nothing of any value to the petitioner therein.

The Second Circuit also found that Sokolov's visa and certificate of naturalization were illegally procured because he advocated or assisted in the persecution of Jews, he assisted enemy forces in their operations against the Allies, and he participated in a movement hostile to the United States.

The Second Circuit also remanded in part to Judge Murphy for the in-camera inspection of Sokolov's "A" file, which file had not been provided to Sokolov during discovery or trial.

On May 11, 1987, Judge Murphy filed his memorandum regarding his in-camera inspection of the "A" file of Sokolov.

The pertinent facts affecting the questions presented for review in this matter are as follows:

Sokolov was born in Orel, Russia on March 2, 1913. He was educated in the Russian school system, having last attended the Pedagogical Institute at Orel in 1936. Following his graduation from that institute, he became employed in 1938 as a school teacher in the area of Voronezh until leaving there in 1942. Sokolov married Alevtina Lunonov on March 1, 1941, and adopted her daughter from a previous marriage on December 14, 1941.

In June of 1942, Nazi Germany's forces invaded Russia, and took control of the region where Voronezh and Orel are situated. Following German occupation, Sokolov traveled to Orel to find employment, and applied for a job with the local newspaper published in the area, *Rech*, in August, 1942. The entire region and its economy, including the newspaper, was under the control of the German Occupation Forces.

Sokolov remained employed by *Rech* from August of 1942 to July of 1943, first as a corrector, then a writer, and ultimately, as a deputy editor. He subsequently resided in Bryansk and Bobruisk, Russia, and then Berlin and Wentorf in Germany. He remained in Germany until his immigration to the United States.

REASONS FOR GRANTING THE WRIT

I

The Second Circuit's determination that Sokolov voluntarily advocated or assisted in the persecution of Jews, assisted enemy forces, and participated in a movement hostile to the United States, misapplied the standard of voluntariness, and deprives Sokolov of the precious right of citizenship without the exacting standard of clear, unequivocal, and convincing evidence.

In any denaturalization proceeding, the Government bears the heavy burden of proving its case by clear, unequivocal, and convincing evidence, which does not leave the issue in doubt. *Schneiderman v. United States*, 320 U.S. 118, 125 (1943). The Government did not prove that Sokolov voluntarily advocated or assisted in the persecution of Jews.

The Second Circuit relied upon the testimony of Professor Robert Hertzstein in determining that Sokolov assisted in or advocated the persecution of Jews. The court agreed that there was no evidence of actual persecution of Jews (21a). At most, the evidence "suggests that there were still Jews in the Orel area, whose persecution Sokolov may have encouraged or assisted by his articles." (22a). The use of the terms "suggests" and "may have" by the court indicates its misunderstanding of the Government's burden of proving its case by clear, unequivocal, and convincing evidence.

The absence of proof of persecution establishes that Sokolov did not and could not assist in persecution, and also raises serious doubt as to whether the articles advocated the persecution of Jews.

Sokolov testified that there were no Jews in the area that could have been persecuted, and the Government's proof only suggests that Jews were in the area. Without proof of persecution, the Government did not prove Sokolov advocated persecution because in his own mind he knew that persecution could not be conducted against persons who did not exist.

Absent any proof of persecution, the court's finding in this regard is based on speculation, conjecture, and surmise, and is in conflict with the decisions of this Court as not meeting the exacting standards of proof. *Fedorenko v. United States*, 449 U.S. 490 (1981); *Costello v. United States*, 365 U.S. 265 (1961); *Schneiderman v. United States*, 320 U.S. 118 (1943). The Circuit

Court also held that Sokolov was ineligible for a visa because his articles assisted enemy forces or the war with the Allies so that he was not of concern to the I.R.O., and the articles amounted to participation in a movement hostile to the United States, in violation of D.P.A. Section 13.

The court did not, however, find that Sokolov voluntarily assisted enemy forces, but that mere assistance rendered him ineligible. The court did find that Sokolov voluntarily advocated or assisted in persecution, but this was based on partial testimony of Government's witness, Artur Bay. The crucial portion of his testimony indicated that if Sokolov had refused to write anti-Semitic articles, he would have run into trouble (8a). This supports Sokolov's testimony that he would have been killed or sent to a concentration camp if he refused (22a).

The court did not specifically find voluntary assistance, and it could not, in light of the clear testimony that fear and coercion was involved. It is clear that the court did not apply the standard of voluntariness, and also that the decision would have been different if the court had applied the correct standard.

The court also failed to accord its decision with Public Law 14, March 28, 1951, 65 Stat. 28, whereby Congress amended the immigration laws to set a standard that membership and affiliation would not be voluntary if it were solely for purposes of obtaining employment, food rations, or other essentials of living, and where necessary for such purposes.

Since, according to this standard, Sokolov's employment with the newspaper, *Rech*, was involuntary, and since no Jews were persecuted as a result of his articles, and since his purpose in writing was not anti-Semetic, not anti-United States, and since all employment was under the control of the German Occupation Forces, the court's finding that Sokolov's articles amounted to

participation in a movement hostile to the United States cannot be reconciled with the requirement of proof that is clear, convincing, and unequivocal.

II

The Second Circuit Court of Appeals misapplied the *Chaunt* test, concluding that a probability standard of proving the materiality of a misrepresentation was sufficient, thereby placing itself in conflict with the decision of the Supreme Court and other Circuit Courts of Appeals.

Although the Supreme Court was asked in *Fedorenko v. United States*, 449 U.S. 490 (1981) to clarify the divergent viewpoints regarding the correct application of its test of materiality as set forth in *Chaunt v. United States*, 364 U.S. 350 (1960), it did not do so because *Fedorenko* was decided on other grounds, namely, illegal procurement. The conflict of how to interpret and apply *Chaunt* has continued to date. The Supreme Court has granted certiorari in *Kungys v. United States*, October Term, 1986, wherein the same issue is raised as to the correct application of *Chaunt* involving an issue of misrepresentation at the visa level.

The *Chaunt* test was applied to misrepresentations at the naturalization level.

The Second Circuit Court's avoidance of the well-accepted "certainty" test adopted by the Tenth Circuit, Third Circuit, and Justice Blackman in *Fedorenko v. United States*, 448 U.S. 490, 522-26 (1981) requiring proof of the existence of any disqualifying fact and use of the "potential" test is an attempt to create such a liberal interpretation of *Chaunt* so as to reduce the burden of the Government from clear, convincing, and unequivocal to areas of inference, conjecture, and speculation. The use of the term

"potential", meaning possible but not actual, is a substantial departure from its previous position requiring "probability". *Maikovskis v. I.N.S.*, 773 F. 2d 435 (2nd Cir. 1985) Thus, the divergent opinions of the circuit courts require a clarification as to what the standard is under *Chaunt* in establishing the materiality of misrepresentation.

In the present matter, the District Court, having analyzed the numerous documents in evidence and the testimony of all witnesses, weighed this matter before it, and made findings which were considered relevant, essential, and true as a basis for its conclusion on the issues at hand. The District Court, although not referring to *Chaunt*, concluded that Sokolov had "misrepresented and concealed his true relationship with Rech" . . . , and "testified falsely to the D.P.C., the I.R.O. and the United States Counsel in Hamburg." (35a). The District Court also quoted from *Fedorenko v. United States*, 449 U.S. 490 (1981), stating material misrepresentations in the visa application do warrant a denial of citizenship, The court specifically omitted any reference to the naturalization process, and did not issue any finding whatsoever that Sokolov made any material misrepresentations in connection with the naturalization process.

This is of great significance because although the Government urged the court to find Sokolov made misrepresentations to the I.N.S., and also urged the court to accept the proferred testimony of Judge Cohen, who was offered as an expert on the naturalization process, Judge Murphy did not do so. The decision of the District Court shows the trial court reviewed all the witnesses' testimony and commented on those which he felt were relevant and significant to make a determination of the issues. By excluding the Government's offer of proof on misrepresentation at the naturalization level, the court must have felt there was an absence of proof on that issue.

On appeal, the Second Circuit went into the record and reviewed the sworn statement Sokolov gave to the I.N.S. investigator, Mr. Fichandler (Appendix E). It took out of context a small portion of that answer, interpreted the word "line" to mean a string of words on a page, found the *Rech* articles to be authored by Sokolov (although Sokolov denied this), and concluded that the portion of the answer stating he had "not written one single fascist or pro-fascist line" was a material misrepresentation, for, had the investigator discovered that Sokolov was employed by *Rech* as a German Army propagandist, he would have denied him naturalization (19a). The reasoning of the court is specious and falsely leads to the conclusion as to why that phrase was a material misrepresentation. The appeals court concluded Sokolov "willfully concealed and misrepresented the truth" (20a).

In effect, the court was stating that had Sokolov mentioned he wrote fascist or pro-fascist lines, such admission "would have occasioned . . . an investigation potentially leading to the discovery of other facts warranting denial of citizenship" (20a). Yet, that court ignored, within the same answer Sokolov gave to the I.N.S. investigator, the very mention of the words "political line", "facist line", "general political line", and "dictated the political line" which clearly establish the correct and true meaning of the word "line". From reading the answer in its entirety, the word "line" had only one plain meaning, which was clearly *policies*. It also ignored Sokolov's mention, within that same answer, just six lines above, "we had to put in remarks Facist and anti-Semetic to please the Germans . . ." (57a-58a)

Clearly the Second Circuit misapplied the *Chaunt* test, since the alleged "concealed" information was given freely in an earlier part of Sokolov's answer. In reading the entire answer, it is stated clearly that Sokolov worked for *Rech* (a paper the investigator knew about) under German occupation, which paper assumed

a certain political line and he put in fascist and anti-Semetic remarks to please the Germans.

The foregoing, taken from Sokolov's answer, exactly provides the reader with the facts the court claims would have produced a denial of naturalization if discovered by the investigator. The fact is that the investigator did discover it. It was freely given.

The court's conclusion is also flawed because it presumes, in spite of the numerous non-disclosed documents in the "A" file, that that allegedly concealed information was not already in the file.

What the Second Circuit did in this case is exactly the type of review it was required to do when faced with the *Chaunt* case on appeal. In *Chaunt v. United States*, 364 U.S. 350, there was a non-disclosure of arrests and a disclosure of membership in a communist labor union. The Supreme Court viewed the non-disclosure as not material because the disclosure of membership, if investigated by I.N.S., should have provided the concealed information. The Court then set forth what constitutes non-disclosure under 8 U.S.C. Section 1451(a).

In the present case, the Government was never denied an opportunity to investigate. Furthermore, the disclosures made by Sokolov provided a complete and truthful answer, or, at the very least, enough leads to obtain additional information either from Sokolov or other sources at its disposal.

Since Sokolov was granted citizenship in spite of his employment with *Rech*, under German occupation, under German censorship, when he and others had to make fascist and anti-Semetic remarks in articles, the disclosure of the claimed misrepresented truth that "he had not written one single facist or pro-facist line" would not, or it is unlikely that it would have,

provided the interviewer with any additional information beyond the revelations in the entire answer given.

III

The Second Circuit Court erred when it substituted its judgment for the District Court in finding facts not discussed or included in the decision of the trial court, and in concluding that those facts support a *de novo* finding of a material misrepresentation of facts to the immigration and naturalization investigator, thereby establishing a basis for denaturalization.

If a Court of Appeals is permitted to take over the fact-finding function of the District Court, it would undermine an essential function of the District Court and cause litigants to view the District Court as lacking full authority to decide cases. If litigants were convinced the appellate court would overrule and substitute its own findings, there would be an overwhelming increase in appeals for what would appear to be appellate retrial.

Under Federal Rules of Evidence, Section 52, it states in part that findings of fact "shall not be set aside unless clearly erroneous". *Pullman-Standard v. Swint*, 446 U.S. 273, 286-87 n. 16 (1982) This rule also precludes an appeals court from retrying the issue and arriving at its own finding of fact. The appeals court should not appoint itself as a fact-finder, but instead, if necessary, remand that part of a case for further review by the trial court to determine if other facts might have been omitted or not found.

There is at best a division among appeals courts as to its authority on review in spite of the clear intent of the rule. Some courts have held that there is little reason to defer to the trial courts' findings except where they are based on demeanor and the evaluation of credibility. *Markum v. United States*, 621 F. 2d 142, 144-45 (5th Cir. 1980). The Second, Sixth, Seventh and Eighth

Circuits seem to adopt the right of review without restriction to the clearly erroneous test, and yet the First, Fifth, Ninth, and Tenth Circuits seem to adopt in totality the plain meaning of the rule, as amended in 1985.

To date, the issue of what limitations apply to the appellate court on review has not been clearly defined by the Supreme Court.

In the case at hand, the Second Circuit Court of Appeals clearly went beyond the District Court's findings, and reached into the record for a justification of its conclusion that a material misrepresentation did occur in Sokolov's answer to a question posed by an investigator of the Immigration and Naturalization Service. The District Court did not consider the interview in its decision, and found Sokolov had made a misrepresentation to the I.R.O., D.P.C. and the United States Consul only (35a).

The Second Circuit Court of Appeals erred in its holding that Vladimir Sokolov made a material misrepresentation to the Immigration and Naturalization Service by stating he had "not written one single facist or pro-facist line", and that such misrepresentation was a basis for denaturalization under Section 340(a) of the I.N.A. [8 U.S.C. Section 1451(a)] (19a-20a).

The appeals court's decision is flawed in several respects. First, the statement was taken out of context. If it is read with the rest of the petitioner's answer, it takes on a quite different, but correct, meaning, and produces a clear, understandable, accurate, and truthful statement. Secondly, the court exceeded its authority as an Appellate Court in arriving at facts which were not found by the District Court, and ignored what weight the trial court should have attached to such alleged facts, thereby subverting the function of the District Court. There was no finding by the District Court that Sokolov misrepresented any facts to the immigration and naturalization investigator questioning him on April 19, 1957.

A. The April 19, 1957 Statement of Sokolov

A pre-naturalization interview was conducted by an I.N.S. investigator with an interpreter at I.N.S. offices in New York City.

The interpreter was not sworn at that time. Sokolov never received a copy of the statement prior to the commencement of the denaturalization proceedings, and was never asked to verify the truth of the matters stated therein.

However, in response to the question asked, which was "How do you account for the fact that this Service has information that the newspaper Rech was pro-Facist and anti-Semetic and that you had similar views?", the Government claims Sokolov responded as follows:

> "This is not true. Under German occupation there were many Russian papers and periodicals published under the dictatorship of the German occupational powers and we were forced to assume certain political line. We Russians fought this the best way we could but under the ever present danger of being shot to death on the spot, we had to put in remarks Fascist and Anti-Semitic to please the Germans but we fought against the Fascist line. This was the general policy of all Russian papers there. While this was the general political line of all these papers there, the Editor-in-Chief dictated the political line of the particular paper Rech in which I worked. Personally, I confined myself to anti-communist articles. I have not written one single fascist or pro-fascist line and as to anti-Semitic remarks, there may have been some to which I was forced." (57a-58a).

The interviewer followed up with a question as to who forced you to make anti-Semetic remarks, and the answer was given. The interviewer did not ask Sokolov to explain why he and others, as stated, "had to put in remarks Fascist . . . to please the Germans . . ." (58a).

It is obvious from a reading of the entire interview that the investigator was most concerned with anti-Semetism and communism as a basis for denial.

It is also clear the answer given by Sokolov established a meaning for the word "line" which was ignored by the Court of Appeals, and misconstrued in its findings.

The word "line", as used four times in the answer, has one clear and definite meaning. The word "line" is referring to the political and philosophical policies of the German Occupational Forces and the German censorship.

Sokolov stated the political line of the newspaper was *dictated* by the editor-in-chief. He was not the editor-in-chief, and stated accurately and truthfully that he did not write, that is, *dictate*, one single fascist or pro-fascist line, that is, fascist or pro-fascist policy.

Sokolov had no authority to dictate or write a fascist or pro-fascist line. The Government has not offered any proof to establish this point. There is nothing in the entire record that would support a finding that Sokolov was a *propagandist* who did dictate fascist or pro-fascist policies. Thus, the Second Circuit Court of Appeals erred in taking a statement out of context and attaching a different or separate meaning to the use of the word "line" other than the plain meaning given to the word through use in other areas of the "statement".

The District Court below did find that Sokolov made material misrepresentations to the I.R.O. and Displaced Persons Commission to procure a visa (Opinion of the District Court, Civil No. N 82-55, May 29, 1986) (37a). However, that finding was reversed by the appeals court because the Government's proof fell short of the required standard of proof of clear and convincing evidence of misrepresentation.

The District Court made no finding, nor did it refer to any alleged misrepresentation to the immigration and naturalization examiner.

The finding of the *de novo* fact is critical, not only because it is an abuse of the function of the appeals court, but because it also creates a violation of the petitioner's constitutionally guaranteed right to due process of law. Such finding went beyond the "clearly erroneous" statement of Rule 52(a) of the Federal Rules of Civil Procedure. The appellate court made its own findings beyond those of the District Court.

The finding of the appellate court violated the defendant's right to due process, wherein he was denied the right of cross-examination at trial relating to this issue. *Dunn v. United States*, 442 U.S. 100 (1979). As addressed in another section of the petition, the petitioner was denied access to his "A" file which contained information used by some of the Government's witnesses in prepartion for trial testimony.

Finally, the appellate court violated its own admonition that inferences are not acceptable in meeting the *Fedorenko* standard, because it inferred that "if the investigator had discovered the fact that Sokolov had employment with *Rech* as a German Army propagandist" he would not have been eligible for naturalization (19a). We do know from the number of documents in the "A" file that further investigation was made and that additional records

were added to the Sokolov file as a result of that further investigation.

Those materials have never been disclosed, and could not be known to the Court of Appeals. Thus, the court could only infer or conject that the investigator did not discover the alleged concealed facts and what was in Sokolov's "A" file.

As a result of the unsupported inferential finding of the Court of Appeals, it concluded that there was a material misrepresentation of a fact to the immigration and naturalization investigator which results in a violation of 340(a) of the I.N.A., 8 U.S.C. Section 1451(a).

Such finding is erroneous as herein stated, and should be reversed by this Court.

IV

The denial of access to Sokolov's "A" file constitutes a denial of due process, and the right to conduct a proper cross-examination of a witness, pursuant to the Fifth Amendment of the United States Constitution and Section 612 of the Federal Rules of Evidence.

The appellate court, upon review of the record, concluded the petitioner's right to conduct a thorough cross-examination under Federal Rules of Evidence Section 612 was denied by the District Court when it prohibited the petitioner's attorney from having access to that portion of the "A" file referred to in preparation of trial testimony by the Government's witness, Judge Cohen (24a).

The Court of Appeals then remanded the case back to the District Court for an in-camera inspection of the "A" file to

determine if any documents were improperly withheld that "might have proved of material significance in cross-examining Judge Cohen" (Decision of the United States Court of Appeals for the Second Circuit) (24a-25a).

Upon remand, the District Court conducted an in-camera inspection of the "A" file sent to that court by the Government, and concluded that none of the sixty-seven documents contained therein "would have been of any value to defendant . . ." (44a).

Although the petitioner took exception to this ruling and requested review of the "A" file by the Second Circuit Court of Appeals, no review was granted.

At the very least, those documents which relate in time to the interview of 1957 should have been produced for review, since they had a direct bearing on what information was in the Sokolov file prior to the issuance of his certificate of naturalization on May 21, 1957. Thus, even though the Court of Appeals attempted to right the wrong of the violation of Section 612 of the Federal Rules of Civil Procedures, such did not occur. In effect, the defendant was denied the right to view any of the records in his "A" file, and denied the right of appellate review of those documents.

When Judge Cohen testified as an expert as to what procedures would have been taken based on the interview and information in the "A" file, the petitioner had the right to cross-examine him on the "A" file as to all documents he reviewed to form a basis for his answers and opinions. Since Judge Cohen did not work on the Sokolov file, he had no personal knowledge of what was done by those who did handle the file, except by the information within that file.

This issue becomes one of great importance because the

Second Circuit Court of Appeals concluded that "if the I.N.S. investigator had discovered this fact [that Sokolov had wartime employment with *Rech* as a German Army propagandist], Sokolov would not have been eligible for naturalization." (19a) This conclusion presumes that the investigator did not discover this fact, when there is no evidence or information in the record to support such conjecture.

Furthermore, by preventing the review of the "A" file on cross-examination, the petitioner was denied his right to due process under the Fifth Amendment.

Without question, the file contained stenographic notes of the April 7, 1957 interview, a LeMonthe memo of April 4, 1957, another LeMonthe memo of March 25, 1957, an I.N.S. request for information (form G-142), an I.N.S. request for records (form G-135) of September 18, 1956, an I.N.S. request for information (form G-135) dated September 18, 1956, an I.N.S. receipt (undated), and numerous other documents placed in the file prior to naturalization, totalling some twenty-one items not produced, and to which petitioner was denied access (45a-53a). Those items would have at least shown whether or not the Government was denied an opportunity to investigate, and what information was within the "A" file prior to the issuance of Sokolov's certificate of naturalization.

The denial of access to the "A" file on cross-examination unlawfully restricted the right of cross-examination, in violation of the Rules of Civil Procedure, denied the petitioner his constitutional rights of due process, and produced speculation as to whether there was a material misrepresentation of fact and whether an investigator was denied the opportunity to discover the truth.

Certainly, the petitioner's rights were violated by the suppression of the facts contained within his file.

The denial of access to a citizen's "A" file, even though exempted by 5 U.S.C. Section 552a(k)(2) from the Privacy Act disclosure and the Freedom of Information Act, 5 U.S.C. Section 552 (1982), is unconstitutional, in that it discriminates against a naturalized citizen in depriving that person of the right to obtain information about himself which has been gathered by an agency of the United States Government, which information may be false and subject to correction.

The expressed purpose of the Freedom of Information Act was to create the right of access of a citizen of the United States to those files and records created by an agency of the United States containing information on the inquirer.

By prohibiting access of a citizen to information in his "A" file, the law discriminates against naturalized citizens by denying them access to those records which form the very basis for their naturalization and the creation of their citizenship.

CONCLUSION

For the various reasons stated herein, this petition for a writ of certiorari should be granted, and the judgment of the Second Circuit Court of Appeals should be reversed and the matter remanded to the District Court for entry of judgment dismissing the complaint.

Respectfully submitted,

BRIAN M. GILDEA
KEVIN W. SMITH
Attorneys for Petitioner

APPENDIX A — OPINION OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 524—August Term, 1986

(Argued: December 12, 1986 Decided: March 24, 1987)

Docket No. 86-6157

United States of America,

Appellee,

— v. —

Vladimir Sokolov, a/k/a Vladimir Dmetrivich Sokolov, Vladimir Sokolov-Samarin, Vladimir Samarin,

Appellant.

Before:

OAKES, CARDAMONE, and DAVIS,*

Circuit Judges.

*Of the United States Court of Appeals for the Federal Circuit, sitting by designation.

Appendix A

Appeal from a judgment of denaturalization rendered by the United States District Court for the District of Connecticut, Thomas F. Murphy, Judge, pursuant to section 340(a) of the Immigration and Nationality Act, 8 U.S.C. § 1451(a).

Reversed and remanded in part; affirmed in part.

Kevin W. Smith, Hamden, CT, Brian M. Gildea, New Haven, CT, of counsel, *for Appellant.*

Michael Wolf, Deputy Director, Office of Special Investigations, Criminal Division, Department of Justice, Washington, DC (Stanley A. Twardy, Jr., United States Attorney for the District of Connecticut; Neal M. Sher, Director, Office of Special Investigations, Joseph F. Lynch, Bruce J. Einhorn, Aron A. Goldberg, Trial Attorneys, of counsel), *for Appellee.*

OAKES, *Circuit Judge:*

This appeal by Vladimir Sokolov is from a judgment of denaturalization rendered by the United States District Court for the District of Connecticut, Thomas F. Murphy, Judge, pursuant to section 340(a) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1451(a) (1982). Under section 340(a), a person who has been admitted to citizenship may be denaturalized if the order admitting him and his certificate of naturalization "were illegally

procured or were procured by concealment of a material fact or by willful misrepresentation." The district court ordered Sokolov denaturalized because he collaborated with the Nazis during World War II, and thus was ineligible for a visa or for naturalization as a United States citizen, and because he concealed his wartime activities from immigration and naturalization officials when he applied for a visa and again later when he applied for naturalization.

Government proof at trial was to the effect that Sokolov, a Russian living in the German-occupied Soviet Union, worked voluntarily as a writer for and later also as deputy chief editor of the Russian-language newspaper *Rech* ("Speech"), which was published by the German army. Under the pseudonym "Samarin," Sokolov wrote anti-Semitic articles urging the Soviet population to support anti-Jewish/Bolshevik actions taken by the Nazis, and articles criticizing the United States and Great Britain and seeking to aid in their military defeat. In addition, as deputy chief editor of *Rech*, Sokolov edited articles with these same themes.

On appeal, Sokolov urges that the Government failed to prove by the clear, unequivocal and convincing evidence required by *Fedorenko v. United States*, 449 U.S. 490, 505 (1981), that he made material misrepresentations about his activities to immigration officials. He argues too that the evidence was insufficient to support the conclusion that his visa and naturalization were illegally procured. He claims, first, that there was insufficient evidence that he "advocated or assisted in the persecution of any person because of race, religion, or national origin," and hence that the Government failed to show that he was ineligible to receive a visa by virtue of section 13 of the Displaced

Persons Act of 1948, ch. 647, 62 Stat. 1009, 1014 (1948), as amended, ch. 262, 64 Stat. 219, 227 (1950) (the "DPA"). *See United States v. Sprogis*, 763 F.2d 115, 117 n.2 (2d Cir. 1985). Second, Sokolov argues that the evidence was insufficient to prove that he was ineligible to receive a visa as a displaced person under section 2(b) of the DPA, 62 Stat. at 1009, by reason of having "voluntarily assisted the enemy forces . . . in their operations against the United Nations," within the meaning of the Constitution of the United Nations International Refugee Organization ("IRO"), *opened for signature* December 15, 1946, 62 Stat, 3037, 3051-52, T.I.A.S. No. 1846. As to the issues of misrepresentation and illegal procurement, we affirm.

Additionally, Sokolov makes evidentiary arguments to the effect (1) that he should have had access to certain documents in his immigration file both for preparation before trial and in connection with the cross-examination of a Government witness; (2) that copies of *Rech* should not have been admitted into evidence; and (3) that the district court improperly amended its conclusions of law by substituting the phrase "clear and convincing evidence" for "preponderance of the evidence" as the standard by which the court found for the Government. As to the first of these evidentiary points, we reverse and remand for in camera scrutiny by the trial court of the immigration file, but as to the other points, we affirm.

I. BACKGROUND

A. *Sokolov's Background*

Sokolov was born in 1913 in Orel, Russia, a city approximately 200 miles south of Moscow. Before World War II and for 14 months after the June 1941 German

invasion of the Soviet Union he lived and worked near Voronezh. In August 1942, however, he returned to Orel, which was under German occupation, and applied for employment as a writer for the Russian-language newspaper *Rech. Rech* was at the time controlled by the German Army Panzer Propaganda Company 693. It was published three times weekly with at least 50,000 copies being distributed. Its purpose was to spread Nazi propaganda to the people living in occupied Soviet territory. By his own admission, Sokolov wrote articles for *Rech* "on the Jewish question" because if he did not do so he would "be thrown out and then . . . liquidated." He also "had to" write articles against the nations fighting Nazi Germany, and others encouraging Russians to volunteer for work in Germany. As an employee of *Rech,* Sokolov received a weekly salary and also obtained preferential treatment in housing and food supplies for his family. He was so successful at his job that the Germans awarded him medals for "Bravery" and "Merit" in March and April, 1943, and he was promoted to deputy chief editor of the newspaper.

When the German army retreated westward in the late summer of 1943, the editorial personnel of *Rech,* including Sokolov, became attached to Propaganda Company 612 and were relocated to the cities of Bryansk and Bobruisk in Nazi-occupied Soviet territory. In the fall of 1944 Sokolov followed the retreat of the German army to Germany and until the end of the war he was employed in Berlin as a writer for the German-controlled Russian-language propaganda newspapers *Zarya* ("Dawn") and *Vollya Naroda* ("Will of the People"). These newspapers, like *Rech,* published attacks on the Jews and exhortations to the Soviet people to support Nazi Germany against the Allies.

Appendix A

B. *Sokolov's Writings*

The district court noted that each of the seventeen articles produced in evidence bearing Samarin's by-line "contains vicious attacks on Jews." Examples from two of them will suffice to portray the type of material for which Sokolov bears responsibility. The first, dated May 30, 1943, appearing in *Rech* No. 61 (244), is entitled "The Former Masters of Orel." This article pictures the "Kikes" as "the true masters" of the USSR, who "did not work," "hid in the shadows," but "made the decisions." This was true all over the USSR: "Kikes were masters of every institution, every city, the whole country." Sokolov complains that "[i]f in a city the Kikes made up 10% of the inhabitants, then they were 90% of the 'responsible persons.' " He speaks of the head in Orel of the Narodnyi Komissariat Vnutrennikh Del ("NKVD"), the Russian Security Police, as one and then names others who were in the Soviet hierarchy running Orel. Altogether, Sokolov names forty-seven Jews in positions of responsibility, and at the end of his article he exhorts his readers to "Thrash them."

On June 20, 1943, in *Rech* No. 70 (253), again under the Samarin by-line, Sokolov wrote "Protocols of the Elders of Zion," an article about the Russian translation of a book purporting to lift the veil on "the shady affairs of world Jewry." Sokolov first reminds the reader of the "Jewish threat" and of the Jews' move toward "world domination" by "seizing first economic and then political power." Then, after recounting the "Protocols," supposed Jewish goals and methods for achieving them, he says that much that is found in them "was realized and instituted in the Kikes' state—the USSR," and refers to Stalin as being "on the throne, on the Kike throne, placed there by

Kikes and by their servants on top of the bones of millions of Russians." Sokolov speaks of war being "provoked against Germany" because of "a great deal of hatred from world Jewry towards Germany," and says that in this war "Kike-Bolshevism united with the capitalist countries England and America," because "in the USSR, England and America, Kikes are in power."

At trial Sokolov testified that whereas he had used the word "Jews," this was changed by his editor to "Kikes" toward the end of the "Protocols" article, and indeed that at the very end of the article a certain amount of new material was added. Nevertheless, he admitted having written an article on the subject of the "Protocols." The district court stated that Sokolov's "republication of 'The Protocols of the Elders of Zion' by his explanation [of them] compounds the insult." As to his article on "The Masters of Orel," Sokolov agreed that it was anti-Semitic, but he did not agree that its purpose and intent was to encourage hatred for the 47 people named because "they were not there any more." Sokolov also testified that the names were inserted and, indeed, that he could not recognize a single paragraph of the piece because everything was "written over."

The district court gave credence, however, to the videotaped testimony of Artur Bay, a corporal in the German army, attached to Panzer Propaganda Company 693 and Sokolov's superior at *Rech*. Bay testified that the main propaganda theme routinely published in *Rech* was the fight against "Jewish Bolshevism." As a *Rech* writer, he testified, "[y]ou should not say 'Bolshevism,' but you should also use the name 'Jewish Bolshevism.' That was propaganda for the Nazi ideology." *Rech* writers' propaganda "should prove that the Bolshevism was led by the

Jews' world force." They were also to refer to the western Allies as the "Jewish plutocracy." Bay gave evidence as to Sokolov's application to work for *Rech* as a writer. He stated that before a person could join the writing staff, he had to be checked by the Abwehr (German intelligence). One requirement for writers was that they "be convinced Nazis, that they follow the ideas of the Nazis, that they were convinced anti-Bolsheviks, and the main point was the Jewish Bolshevism." Finally, Bay testified as to Sokolov's work at *Rech*. He said that he had been "satisfied" with Sokofov's writing: it conformed to what was expected of the *Rech* writers. Sokolov "wrote anti-Semitic articles, of course, because that was expected from him, like from all the other co-workers," and he never stated that he did not wish to write anti-Semitic articles, though indeed if he had he would have run into trouble. Sokolov also wrote articles on the theme of how good everything was in Germany, Bay testified, and in particular articles describing how good the Russian workers had it in Germany.

C. *Sokolov's Immigration to the United States and Naturalization as a United States Citizen*

The DPA enabled European refugees to emigrate to the United States without regard to previous immigration quotas. Section 2(b) of the DPA, 62 Stat. at 1009, incorporated the definition of "refugees or displaced persons" contained in the Constitution of the IRO, a constitution ratified by the United States. *See Fedorenko*, 449 U.S. at 495 nn. 3 & 4. Section 10 of the DPA, 62 Stat. at 1013, placed the burden of proving eligibility under the Act on the person seeking admission and provided that "[a]ny person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as

an eligible displaced person shall thereafter not be admissible into the United States." *See Fedorenko*, 449 U.S. at 495.

Pursuant to procedures established under the DPA, each applicant for admission was interviewed first by representatives of the IRO in order to ascertain that the person was indeed a refugee or displaced person. By the terms of the IRO Constitution, war criminals, quislings, and traitors were ineligible for refugee or displaced person status, as were persons who could be shown "(a) to have assisted the enemy in persecuting civil populations of countries, Members of the United Nations; or (b) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations." Annex I, Part II, 62 Stat. at 3051-52 (footnote omitted); *see Fedorenko*, 449 U.S. at 495 n.4. An ineligible person was considered to be not "of concern" to the IRO, and an applicant not "of concern" to the IRO was ineligible for a United States visa under DPA § 2(b). If a person was found to be "of concern" to the IRO, on the other hand, he or she could then apply for a visa as a displaced person. A preliminary determination on the issuance of a visa was made by an official of the Displaced Persons Commission (the "DPC") after an interview with the applicant. Final decision was made by one of a number of State Department vice consuls who were specially trained for the task and sent to Europe to administer the DPA. *See Fedorenko*, 449 U.S. at 495-96. The visa applicant's screening was often done, however, by young army personnel given very short training before being sent to interview the alleged displaced persons. *See* L. Dinnerstein, *America and the Survivors of the Holocaust* 193 (1982); A. Ryan, *Quiet Neighbors: Prosecuting Nazi War Criminals in America* 22-23 (1984).

Appendix A

On May 21, 1951, Sokolov filed an Application for Immigration Visa and Alien Registration, Foreign Service Form 256A, at the State Department consular office in Wentorf, Germany, having cleared the IRO and DPC processes. There was expert testimony at trial from Henry Heymann, the State Department officer-in-charge of the consular program at the displaced persons camp at Wentorf, that in order to establish the eligibility of visa applicants under sections 2(b) and 13 of the DPA, vice consuls routinely inquired whether they had advocated or assisted in persecution or had voluntarily assisted the Nazi war effort.[1] In any event, Sokolov received his immigration visa on the day he filed his application. He was admitted to the United States on June 27, 1951, after signing an affidavit filed with the Immigration and Naturalization Service (the "INS") to the effect that he had never been a member of an organization designated by the Attorney General as communist, had never "participated in any movement which is or has been hostile to the United States or the form of the government of the United States," and had "never advocated or assisted in the persecution of any person because of race, religion or national origin."

[1]His testimony was also that any writer and editor of a Nazi propaganda newspaper who had written anti-Semitic, anti-Allies, and pro-German articles would have been denied a visa as a routine matter, and that if an applicant had misrepresented and concealed these activities there would have been additional grounds for denial under section 10 of the DPA. Michael Thomas, the chief eligibility officer of the IRO and coauthor of the eligibility manual, and Gerald Sophar, case analyst for the DPC in Wentorf, testified as to the IRO and DPC stages of Sokolov's visa application. Heymann, Thomas, and Sophar had not themselves interviewed Sokolov at Wentorf, or processed his applications. Evidently, the IRO, DPC, and vice consular officials who interviewed Sokolov in Germany could not be found or were deceased at the time of trial, which was 35 years after Sokolov filed his application for a visa.

Appendix A

In order to be naturalized as a United States citizen, one has to be lawfully admitted for permanent residence, be of good moral character, be attached to the principles of the Constitution of the United States, and be well disposed towards the good order and happiness of the United States. 8 U.S.C. § 1427(a) (1982). A person who gives false testimony for the purpose of obtaining INA benefits is defined as not of good moral character in 8 U.S.C. § 1101(f)(6). Application for citizenship is made to the INS by filing an Application to File Petition for Naturalization and a biographic information sheet, together comprising INS Form N-400, which is signed under oath by the applicant. The naturalization examiner then reviews the alien's immigration file, including his displaced person report, his visa application, and the Form N-400, and prepares a Petition for Naturalization, Form N-405, which again is signed under oath by the applicant. At that point, if concerns still exist regarding an applicant's eligibility, INS investigators are requested to conduct a further investigation.

Sokolov submitted his Form N-400 to the INS in 1956, swearing, inter alia, that he had not given false testimony for the purpose of obtaining any benefit under the immigration and naturalization laws. He executed Form N-405 on October 17, 1956, swearing to the truth of the contents of the form and asserting that he was a person of good moral character attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. On the Form N-405, however, the naturalization examiner authorized a further investigation on the basis of a June 12, 1951, CIA memorandum to the effect that one Vladimir Sokolov had been an intelligence officer attached to the NKVD. The INS investigator obtained an FBI report that

stated that an informant had told the FBI that Sokolov had worked for *Rech,* was pro-Fascist, and in the informant's opinion had collaborated with the Gestapo. The report noted, however, that the informant at one point said he had a personal grudge against Sokolov.

After receiving the FBI report, the INS investigator questioned Sokolov about his wartime activities. Sokolov admitted during his interview that he had been employed by *Rech* as the "Literary Editor of the paper and then the Deputy Editor" during the period when Orel was under German occupation. He stated that his duties as literary editor were as "corrector and proofreader of the paper from the grammatical point of view," and that he also wrote articles against the communists. The crucial question in the interview was as follows:

> How do you account for the fact that this service has information that the newspaper *Rech* was pro-Fascist and anti-Semitic and that you had similar views?

He gave the following answer:

> This is not true. Under German occupation there were many Russian papers and periodicals published under the dictatorship of the German occupational powers and we were forced to assume certain political line. We Russians fought this the best way we could but under the ever present danger of being shot to death on the spot, we had to put in remarks Fascist and Anti-Semitic to please the Germans but we fought against the Fascist line. This was the general policy of all Russian papers there. While this was the general political line of all these papers there, the Editor-in-Chief dictated the political line of the particular paper *Rech* in which I worked. Personally, I

> confined myself to anti-communist articles. I have not written one single fascist or pro-fascist line and as to anti-Semitic remarks, there may have been some to which I was forced.

The examiner then asked, "Who forced you to make anti-Semitic remarks?" and was given the reply, "The entire German Censorship." The next question was, "Outside of being forced by the German authorities to make anti-Semitic remarks, have you ever personally been anti-Semitic and have you ever personally been pro-fascist?" Sokolov answered that he had not. He also answered "No" to the questions "Have you ever collaborated with the German Gestapo or with the German Army?" and "Were you ever instrumental in having anyone in Orel, Russia, or in any other place sent to a German Concentration Camp?"

The INS investigator chose not to credit the FBI informant's statements, as did the naturalization examiner who proceeded to recommend Sokolov for naturalization. Neither had access to the copies of *Rech* that are in our record.

D. *Post-Naturalization Events*

Sporadic, disorganized, and for the most part unsuccessful efforts by the INS to deport or denaturalize alleged Nazi collaborators culminated in a 1978 General Accounting Office investigation. *See* A. Ryan, *Quiet Neighbors, supra*, ch. 2. At the insistence of the House Immigration Subcommittee, the Office of Special Investigations (the "OSI") was then formed in the Criminal Division of the Justice Department to bring civil denaturalization and deportation proceedings against Nazi collaborators. Since then, a number of such cases

have been pursued, many of them successfully. *See* Massey, *Individual Responsibility for Assisting the Nazis in Persecuting Civilians,* 71 Minn. L. Rev. 97, 119-36 (1986). The present action was instituted by OSI and assigned to the United States Attorney for the District of Connecticut. The complaint was in eight counts. Counts I-V alleged that Sokolov had illegally procured citizenship under section 340(a) of the INA, 8 U.S.C. § 1451(a), because he had not entered the United States under a valid visa, as required by section 316(a)(1) of the INA, 8 U.S.C. § 1427(a)(1). Count I alleged Sokolov was ineligible to receive a visa under section 13 of the DPA because he had advocated or assisted in persecution; Count II that he was ineligible as not being "of concern" to the IRO by reason of having assisted in persecution; Count III that he was ineligible under section 13 of the DPA because he had been a member of or had participated in a movement hostile to the United States; Count IV that he was ineligible as not being "of concern" to the IRO by reason of his having voluntarily assisted the enemy forces; and Count V that he was ineligible under section 10 of the DPA because he had made willful misrepresentations in the course of gaining admission to the United States. Counts VI and VII of the complaint alleged that Sokolov was not a person of good moral character as required for naturalization by section 316(a)(3) of the INA, 8 U.S.C. § 1427(a)(3), because he advocated or assisted in the persecution of Jewish civilians and gave false testimony to obtain his visa and citizenship. Finally, Count VIII alleged that Sokolov concealed or willfully misrepresented material facts in the course of procuring his visa and his naturalization.

The district court, without spelling out the count pursuant to which it was making its findings, found that the

Government proved by clear, unequivocal and convincing evidence[2] that Sokolov procured both his visa and certificate of naturalization illegally and by means of misrepresentation of material facts. Accordingly, the district court entered judgment for the Government, vacating the order of the United States District Court for the Eastern District of New York that granted appellant citizenship and cancelling his certificate of naturalization.

II. DISCUSSION

A. *Misrepresentation*

Appellant argues that the district court erred in finding that the Government proved by clear, unequivocal, and convincing evidence that he had made material misrepresentations in the course of procuring his visa and his naturalization.

As to Sokolov's visa application, we agree that the Government failed to prove by the *Fedorenko* standard that appellant made material misrepresentations. Gerald Sophar, a DPC case analyst in Wentorf, testified that the DPC investigated the background of visa applicants. Investigators, he said, questioned applicants about their wartime activities, and asked if the applicant had assisted in persecution or had voluntarily assisted enemy forces. Answers to these questions, Sophar testified, would have been included in the DPC investigator's report and in the DPC case analyst's review of the application. In particular, if an applicant had revealed to the DPC that he had been a writer or editor for a Russian-language newspaper

[2]The district court's opinion originally here stated that the standard satisfied was "a fair preponderance of the evidence," but on the Government's motion the opinion was amended to find the higher standard of proof mandated by *Fedorenko* to have been satisfied.

in occupied territory, this would have been included in the DPC report. Nevertheless, as the district court noted, there was "no evidence . . . of the actual interview with Sokolov." Nor was there, for example, evidence that DFC officials were required to and always did ask particular questions of applicants. The evidence that the Government developed at trial was not sufficiently probative of the questions Sokolov was asked or the answers he gave during his DPC interview to meet the strict *Fedorenko* standard of clear and convincing evidence of misrepresentation. The Government argues that the DPC report shows Sokolov told DPC officials he was a "corrector" at Orel, Bobruisk, and Berlin, and that any case analyst who had seen the word "corrector" would have called for a further investigation of the applicant. It asks that we infer from the absence of more details about Sokolov's wartime employment in the report that he must have made misrepresentations in the course of these further investigations. The Government would have us assume a regularity in the conduct and content of DPC interviews for which there is inadequate support in the record. The inference it would have us make would be little short of mere conjecture, and a far cry from the clear, unequivocal evidence of misrepresentation that *Fedorenko* demands.

The Government's evidence in connection with Sokolov's application for an immigration visa and alien registration at the State Department consular office in Wentorf is similarly flawed. Henry Heymann, the officer-in-charge of the consular program at Wentorf, testified that the vice consul interviewing a visa applicant would have asked questions about the applicant's wartime activities, that it would have been "logical" for the vice consul to ask whether the applicant had in fact assisted in persecution or had voluntarily assisted enemy forces dur-

ing the war, and that vice consuls "very often" asked whether the alien had participated in movements hostile to the United States during the war. Heymann also testified that the information about Sokolov's wartime residences on his visa application would have caused further questioning by the vice consul, because it appeared from this information that Sokolov was in German-occupied territory and "was going westward as the German army retreated westward." This testimony is certainly admissible under *Fedorenko*, 449 U.S. at 510-11. But because it is so speculative, it is insufficiently probative to meet the *Fedorenko* standard of proof. We do not know whether in fact Sokolov was asked all, or indeed any, of these questions—only that the questions were "logical" and "very often" asked. Because the Government's proof falls short of meeting the *Fedorenko* standard, we decline to infer from the absence of statements on his visa application that Sokolov misrepresented his participation in writing and editing anti-Semitic and pro-Nazi articles for a propaganda publication.

We turn now to the evidence that Sokolov made material misrepresentations when he applied for naturalization. The record includes a transcript of Sokolov's INS interview. The Government claims that Sokolov "concealed the nature and sponsorship of" *Rech* during this interview. But he was not directly asked who sponsored *Rech*. Furthermore, he did say that "[u]nder German occupation there were many Russian papers and periodicals published under the dictatorship of the German occupational powers." He also said that "the Editor-in-Chief dictated the political line of the particular paper *Rech* in which I worked." The Government argues too that Sokolov "denied that he had voluntarily written any pro-Fascist or anti-Semitic articles." But he did admit

that "there may have been some [anti-Semitic remarks] to which I was forced [by] [t]he entire German Censorship." This appears to be at worst a half-truth, since Sokolov, once he did work for *Rech*, was indeed required to make anti-Semitic remarks, as testified to by Artur Bay. Although Sokolov's statement no doubt was misleading, we are reminded by *Bronston v. United States*, 409 U.S. 352 (1973), that an unresponsive answer that is literally true but arguably misleading by negative implication, even if intentionally given in place of the responsive answer called for by a proper question, is not punishable under a perjury statute making it an offense for a witness willfully to state "any material matter which he does not believe to be true."

Sokolov did, however, tell the INS investigator that he had "not written one single fascist or pro-fascist line." This statement is not subject to construction, and it is a misrepresentation. The evidence shows Sokolov's articles followed the Nazi propaganda line. This propaganda line, Sokolov agreed, consisted of two basic themes: "namely that the German Army liberated the Russian people and two, that Jews caused all the sufferings of the Russian people." Sokolov was requested to follow this line in his work for *Rech*. He conceded under examination by Government counsel that he had been given "written material from the German Army propaganda apparatus to use as a guide in the articles [he was] to write." It was his "job to take this material and make it more understandable for Russian readers of *Rech*." In doing so, he "wrote articles against the allies and against the Jews," though he said he did this "[u]nder orders."

The "fascist or pro-fascist" nature of Sokolov's writings is clear from the copies of *Rech* that are in evidence. His

article "On Your Own Land" is an example of propaganda to the effect that the Nazis had "liberated" the Russian peasantry. He wrote, "The Great Germany Army, which has brought the people liberation from the Judeo-Bolshevik yoke, has given the peasantry something they could not even dream about under the Bolshevik regime—land." In the same piece he said, "The transfer of land into the hands of the peasantry and the new life of the Russian peasant are inextricably linked now with the New Order, with Germany and with its Army." Examples of propaganda to the effect that Jews had been responsible for the suffering of the Russian people have already been noted in the discussion of Sokolov's articles entitled "The Former Masters of Orel" and "Protocols of the Elders of Zion." In another article, "Liberation Struggle," Sokolov wrote:

> On one side are the people of Europe headed by National Socialist Germany in league with the great Oriental power—Japan. On the other side is the bloc of plutocracy and bolshevism. The world is divided into two parts. Germany and its allies constitute a force that is encharged with bringing order and justice to mankind.
>
> . . . .
>
> The current war was prepared and provoked by Jewry, which already had brought so much suffering to mankind through the centuries.

The evidence shows, then, that Sokolov had wartime employment with *Rech* as a German army propagandist. If the INS investigator had discovered this fact, Sokolov would not have been eligible for naturalization. Sokolov's misrepresentation to the investigator, that he had "not

written one single fascist or pro-fascist line," was therefore highly material. A fact concealed by an alien during the immigration and naturalization process is material if its admission would have occasioned either (1) the denial of naturalization or (2) an investigation potentially leading to the discovery of other facts warranting denial of citizenship. *See Chaunt v. United States*, 364 U.S. 350, 355 (1960); *Maikovskis v. INS*, 773 F.2d 435, 440-42 (2d Cir. 1985), *cert. denied*, 106 S. Ct. 2915 (1986) (in deportation case, materiality of misrepresentation is established when the investigation "probably would have" led to the discovery of facts warranting denial of a visa). Material misrepresentations at naturalization will result in denaturalization under section 340(a) of the INA, 8 U.S.C. § 1451(a). *See United States v. Schellong*, 717 F.2d 329, 333-35 (7th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). Sokolov, having been given a special investigative interview, proceeded willfully to misrepresent and conceal the truth, thereby disentitling him from remaining a citizen.

B. *Illegal Procurement*

There is a second, independent ground for our decision that Sokolov should be denaturalized: he was ineligible for citizenship and illegally procured it. "Citizenship is illegally procured any time the applicant has failed to comply with any of 'the congressionally imposed prerequisites to the acquisition of citizenship.' " *United States v. Sprogis*, 763 F.2d at 117 n.2, quoting *Fedorenko v. United States*, 449 U.S. at 506. One of these prerequisites is that the person seeking naturalization have been "lawfully admitted for permanent residence," in other words, have a valid visa. 8 U.S.C. § 1427(a)(1). For appellant's visa to have been valid, he had to have been eligible to receive a visa under the DPA. As we have recounted, the DPA

made eligible for a visa only persons who could show that they were "of concern" to the IRO. DPA §§ 2(b), 10, 62 Stat. at 1009, 1013. Specifically not of concern to the IRO were "[a]ny . . . persons who can be shown: (a) to have assisted the enemy in persecuting civil populations of countries . . . or (b) to have voluntarily assisted the enemy forces since the outbreak of the second world war in their operations against the United Nations." Constitution of the IRO, *supra*, 62 Stat. at 3051-52 (footnote omitted). Furthermore, the DPA itself made ineligible for a visa "any person who is or has been a member of or participated in any movement which is or has been hostile to the United States or . . . who advocated or assisted in the persecution of any person because of race, religion, or national origin," DPA § 13, 64 Stat. at 227, or any person "who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person," DPA § 10, 62 Stat. at 1013.

The Government has a heavy burden of proving illegal procurement, *see Sprogis*, 763 F.2d at 121, but in this case it has met its burden. It has shown that Sokolov was ineligible for a visa, and hence procured his citizenship illegally, because he had advocated or assisted in the persecution of Jews and had assisted enemy forces in their operations against the allies. Webster's Dictionary defines "persecution" as "the infliction of sufferings, harm, or death on those who differ . . . in a way regarded as offensive or meriting extirpation," and as "a campaign having for its object the subjugation or extirpation of the adherents of a religion." The Government has shown that Sokolov's work as a German army propagandist involved his "advocating or assisting" in the persecution of Jews in the large area served by *Rech*. Although there was no showing of actual persecution of Jews in the Orel area

resulting from these articles, it is plain on the face of DPA § 13 that advocating persecution in itself renders a person ineligible for a visa. In any case, such propaganda does assist persecution by creating a climate of opinion in which such persecution is acceptable. Professor Robert Herzstein, an expert on Nazi propaganda, testified that a purpose of propaganda was to make "Germany's political policies acceptable for German purposes in areas dominated by German military and political institutions." Articles such as Sokolov's "conditioned the Russian people into accepting and carrying out the National Socialist Policy in regards to the Jews," a policy of persecution. Though Nazi security police declared Orel "Judenfrei" in late 1941, Herzstein testified that other reports from the same source indicated Jews were active in the forests. This evidence suggests that there were still Jews in the Orel area, whose persecution Sokolov may have encouraged or assisted by his articles.

Sokolov, it is true, alleges that anti-Semitic passages were added to his articles by his editor, and that he "was forced to stay and accept the changes being made . . . because if he refused, he would be dead or sent to a concentration camp." But the district court credited the testimony of Artur Bay that to get a job at *Rech* a person had to be a convinced opponent of "Jewish bolshevism," and that Sokolov "naturally . . . wrote anti-Semitic articles, of course, because that was expected from him, like from all other co-workers." The district court found Bay to be a trustworthy witness, and his testimony supports a finding that Sokolov voluntarily wrote anti-Semitic articles for *Rech*, thereby advocating or assisting in the persecution of Jews".

Sokolov illegally procured citizenship, too, because he was ineligible twice over for a visa by reason of having

written, as stated above, pro-Nazi and anti-Allies artices. First, he was ineligible for a visa because his articles "assisted enemy forces" in the war with the Allies, so that he was not "of concern" to the IRO. Second, the articles amounted to a participation in a "movement . . . hostile to the United States," so that he was ineligible for a visa under DPA § 13.

C. *Evidentiary Matters*

Appellant also raises three evidentiary matters. He argues, first, that the district court should have ordered the Government to produce his immigration file, known as an "A-file," so that a government witness, Immigration Judge Howard I. Cohen, could be cross-examined on its contents. Judge Cohen testified that an applicant for naturalization filed a form N-400, an application for a petition to file for naturalization, and that the clerk processing that form would immediately obtain the alien's A-file. The A-file included the alien's original visa and its attachments, which in the case of a displaced person usually included the DPC report, the alien's biographical statement, and his affidavit as to membership in subversive organizations or movements. The A-file would be available to the naturalization examiner at the time the applicant was interviewed.

Judge Cohen testified that the naturalization examiner who conducted Sokolov's interview called for a further investigation of Sokolov's background, and that this would have been normal practice when an examiner had a CIA report that the applicant had worked for the NKVD. Sokolov's A-file was forwarded to the investigations unit of the INS, which then made a written report. This report, together with the applicant's A-file, was returned to the naturalization examiner, who reviewed

the report and found Sokolov eligible for naturalization. Finally, Judge Cohen was asked a series of hypotheticals pertaining to Sokolov's application for naturalization. He testified that if an applicant had revealed his authorship of pro-Axis and anti-Semitic articles, as an examiner he would either have denied naturalization or have asked for a further investigation.

On cross-examination Judge Cohen was asked whether he had ever seen Sokolov's original A-file, and he said that he had seen the file folder, but some documents had been removed from it. Clearly, then, he had seen at least part of the A-file. The cross-examiner asked the Government to produce the A-file for Judge Cohen so that he could question the witness with reference to its contents. The Government resisted and the court did not order that the A-file be produced. On appeal Sokolov claims that he had a right to the information in the file under the Privacy Act, 5 U.S.C. § 552a (1982), and also that his right to a thorough cross-examination under Fed. R. Evid. 612 was denied when materials Judge Cohen had used to refresh his memory before testifying were not produced in court. It is not clear from the transcript exactly what documents Judge Cohen had used to refresh his memory. The Government claims that all responsive documents were produced pursuant to Sokolov's discovery request except those that were privileged, including some investigative materials. We, however, do not know whether this was the case, and have no way of knowing it absent in camera inspection of the A-file. On remand we order that the A-file be delivered to the district court for such an inspection. In the event any document appears to have been improperly withheld that might have proved of material significance in cross-examining Judge Cohen or otherwise, our remand will permit the district judge to reopen the

case for purposes of such examination or for other purposes and on the basis thereof to modify his findings.

As to appellant's other arguments for production of the A-file, we note that the INS, pursuant to 5 U.S.C. § 552a(k)(2), has exempted A-files from Privacy Act disclosure, *see* 28 C.F.R. § 16.99(3) (1986). And, under the Freedom of Information Act, 5 U.S.C. § 552 (1982), the questioned material appears to be exempt from disclosure pursuant to subsections b(5) and b(7)(A). *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975).

Sokolov also argues that admission of copies of *Rech* from originals in Soviet archives was improper under Fed. R. Evid. 901(a) because of inconsistencies between one copy and its supposed original. The court accepted the Government's theory that the copy and original represented different editions of the same newspaper. Even if the exhibit concerned were ignored, however, it would not affect the result in this case.

At the end of the district court's initial opinion it stated that the Government had proven its case by a fair preponderance of the evidence. This statement was erroneous under the *Fedorenko* standard, however, which the district court itself had previously noted required "clear, unequivocal and convincing" evidence. Pursuant to a Government motion the court amended its decision to conform to *Fedorenko*. Appellant argues that the district court erred in so amending its decision. We think, however, that the proof was by clear, unequivocal, and convincing evidence, and that the court had full power to amend its manifestly erroneous statement. *See Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986).

We have examined appellant's other contentions and find them to be without merit.

Appendix A

Judgment affirmed in part; case remanded for consideration by the court in camera of appellant's A-file.

APPENDIX B — DENIAL BY THE COURT OF APPEALS FOR THE SECOND CIRCUIT OF A PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

FILED MAY 28 1987

Docket No. 86-6157

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 28th day of May one thousand nine hundred and eighty-seven.

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

VLADIMIR SOKOLOV A/K/A VLADIMIR DMETRIVICH SOKOLOV VLADIMIR SOKOLOV-SAMRIN VLADIMIR SAMARIN

Defendant-Appellant

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the Appellant VLADIMIR SOKOLOV

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

Appendix B

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

s/ Elaine B. Goldsmith
Elaine B. Goldsmith
Clerk

APPENDIX C — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT (MURPHY, J.) AND ORDER OF JUNE 17, 1986

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. N 82-56

FILED JUN 2 1986

UNITED STATES OF AMERICA

Plaintiff

vs.

VLADIMIR SOKOLOV, a/k/a VLADIMIR DMETRIVICH SOKOLOV, a/k/a VLADIMIR SOKOLOV-SAMARIN, a/k/a VLADIMIR SAMARIN

Defendant

MURPHY, D.J.

The Government office of Special Investigations filed this action to revoke defendant's citizenship and to set aside the order of the United States District Court for the Eastern District of New York admitting him to United States citizenship and to cancel defendant's Certificate of Naturalization. Jurisdiction is conferred by 28 U.S.C. §1345 and 8 U.S.C. §1451(a).

It is the Government's claim that defendant procured both his visa and Certificate of Naturalization illegally and by means of misrepresentation of material facts. Defendant has denied all allegations of fraud.

Appendix C

Because some of the relevant events occurred at the beginning of World War II the Government's first witness was a professor of history who explained the function of the German Panzer Propaganda Company (PzPk) and some of the historical facts of the advance of the German army in the beginning of the war and its subsequent retreat. We take judicial notice also that Germany invaded Poland on September 1, 1939 and Russia invaded Poland on September 17, 1939.

Professor Herzstein explained the Nazi use of propaganda as a form of psychological warfare, and to undermine the forces opposing Germany and to support Germany headed by the Reich Ministery for Popular Enlightenment and Propaganda. The German Army was assigned major responsibility and he estimated that he examined over a period of years Nazi propaganda in tens of millions. He also testified that it was the German policy at the start of the war to rid occupied areas of Jews pursuant to Goebbel's orders. And that all commissars of the Communist party were to be shot and that each German army in Russia had a propaganda division which was a military unit.

Defendant was born in Orel, Russia on March 2, 1913 and attended private lessons, Gymnasium and the Pedagogical Institute at Orel from 1920-1936 and thereafter taught school. He is married and has an adopted daughter. Sokolov was residing in Veronezh, Russia when Germany invaded Russia, teaching Russian literature in high school. He went to Orel when Germany occupied Veronezh and there obtained a position on the newspaper RECH in September, 1942. He was interviewed by a German soldier, Corporal Bay, who hired him after he was checked by ABWEHR, part of the German propaganda network before being permitted to work for he had to be a convinced Nazi anti-Bolshevik-mainly

Appendix C

Jewish-bolshevism. Sokolov wrote articles fashioned on material Bay would give him including anti-semetic tirades with the understanding that Bay would have the right to edit and/or correct any of his stories, to all of which Solokov agreed and thereafter followed Bay's instructions without objection. One of the most vicious articles was Sokolov's "The Former Masters of Orel."

Defendant admitted that he would receive material from the PzPk 693 for adapting and incorporating into his articles in RECH. Reading the translations of defendant's 17 articles in RECH was a trying duty for a fact finder for it is a fact that almost all of his *nom de plume* "Samarin" articles are truly anti-semetic libels compounded by his republication in one of the RECH issue of "The Protocols of the Elders of Zion." For his work at RECH Sokolov was not only paid a weekly salary but was awarded decorations and received preferential treatment in housing and in food.

We have read a translation of a book published in 1954 by Vladimir Samarin (Sokolov) in Russian entitled CIVILIAN LIFE UNDER THE GERMAN OCCUPATION 1942-1944 (Ex. 73T) to learn what Sokolov revealed of his association with the newspaper RECH and how he and his family found their way to the Displaced Persons camp at Wentorf. We learned nothing of any relevancy. Although Sokolov writes about RECH and Corporal Bay, he characterizes Bay as a family friend and visitor to his home in Orel, needing a little help now and then with his non-fluent Russian. We find such information about civilian life under German occupation in 1942-1944 to be some evidence of Sokolov's concealment of the true facts of his life in Orel during the time he worked for RECH because there was no disclosure of the true relationship between him and his employer.

Appendix C

There was testimony by Professor Herzstein that Sokolov was also employed by the Einsatzstab Reichsleiter Rosenberg (ERR) and was associated with the "Union for the Struggle Against Bolshevism" which we did not find convincing and which Sokolov denied. We reject such evidence for failure of more substantial proof.

In August 1943 Sokolov retreated with the German armies to Berlin where he was there employed by the Russian-language newspapers ZARYA (Dawn) and VOLYA NARODA (Will of the People). These newspapers were also under German military control. Eventually he, his wife and child became residents at the Displaced Persons camp in Wentorf near Hamburg, Germany. How and when was never revealed.

The Government's evidence on the issues of fraud by Sokolov in obtaining his visa and Certificate of Naturalization was, as might be expected, circumstantial. The principal place was the Displaced Persons camp at Wentorf, the time 1951. The Displaced Persons Act (DPA), Pub. L. No. 8-774, 62 Stat. 1009 (1948) *as amended by* Pub. L. No. 81-555, 64 Stat. 219 (1950) plays an important role in this lawsuit as it has in the lives of many naturalized refugees from war-torn Europe. The Supreme Court has paraphrased the Act in *United States v. Fedorenko,* 449 U.S. 490 (1981) at P. 495 as follows:

> The act established an elaborate system for determining eligibility for displaced person status. Each applicant was first interviewed by representatives of the International Refugee Organization of the United States (IRO) who ascertained that the person was a refugee or

> displaced person. The applicant was then interviewed by an official of the Displaced Persons Commission, who made a preliminary determination about his eligibility under the DPA. The final decision was made by one of several State Department vice consuls, who were specially trained for the task and sent to Europe to administer the Act. Thereafter, the application was reviewed by officials of the Immigration and Naturalization Service (INS) to make sure that the applicant was admissible into the United States under the standard immigration laws. (Footnotes omitted)

It's most relevant part in our mind requires that the displaced person be "of concern" to the International Refugee Organization (IRO). There was no evidence how the employees of the Displaced Persons Commission (DPC) conducted their interviews with the applicants in the camp at Wentorf or any evidence of the actual interview with Sokolov, only the written report required by Section 10 of the Act. (Ex. 57) That report found Sokolov to be "of concern", without which he could not have obtained a visa from the United States consul.

Michael Thomas who was the chief eligibility officer of the IRO and co-author of its manual for eligibility testified that no IRO officer who knew Sokolov's actual background and his writings in RECH would have found him to be "of concern" to the IRO. Although this appears to be close to supernatural knowledge, we accept it as a fair inference from the facts in evidence.

Appendix C

Plaintiff argues therefor that Sokolov must have lied to the DPC by not revealing his writings for, and his association with, RECH. Such of course is highly probable because if he told what he actually did at RECH, it is inconceivable that any examiner would have found him to be "of concern" to the IRO.

Of course, if as is suggested that Sokolov might have told the interviewer that he worked as a "corrector" in Orel, this too would have been a lie, but it might have caused no further questions, or if it did, the answers would be easy because Sokolov knew what a corrector did and the interviewer probably never heard the word before and it would later pass muster with the United States consul when Sokolov applied for a visa.

The most the evidence reveals after Wentorf is that Sokolov thereafter received a visa from the United States consul in Hamburg and he and his family left for the United States by ship with their passage paid by the DPC, arriving in New York City on June 27, 1951.

The Government was fortunate thirty odd years after the events to secure the testimony of Artur Bay, Sokolov's superior at RECH. Bay's testimony was taken by deposition on November 24, 1984 in Hamburg, Germany and video-taped. We find his testimony of major significance. Artur Bay was a corporal in the German army. In private life he too was and is a writer. He spoke French and Russian and of course German. He testified that he received a letter from Sokolov dated June 15, 1982 written in Russian *asking Bay to confirm that his co-workers at RECH also had to write against the Jews.*

Bay also explained that when Sokolov applied for a job on RECH his background had to be checked by ABWEHR and of

course he had to be able to write good articles. He became a redacteur, editor. He wrote on all themes and local events, the war, the international situation, European economy under German rule, and anti-semetic articles. Sokolov never complained. Later Sokolov was sent to Germany to write about the Russian workers in Germany and how good everything was for the Russians. Bay interjected that he too investigated and found it to be very bad. The Russians had to wear badges marked "Eastern" and they were not allowed on tram cars or in restaurants and theatres. Whereas RECH writers had good food, good flats and their families did not have to do heavy manual work.

Bay explained that anti-Jewish writing was against Jewish Bolshevism but one could not distinguish anti-semitism from it and that writers on RECH had to be anti-semetic. He further testified that Sokolov never asked for different work or complained about what he was required to do. He testified that the "corrector" for RECH was at the printing shop and took care that the type setting corresponded to the copy. Sokolov in addition to writing articles for RECH ("...and they were very good") also gave lectures and speeches to the people.

We find Bay a trustworthy witness and that Sokolov in asking him to testify that the other workers had to write against the Jews, whether this was a fact or not, hurt his case considerably for if it were a fact, he could so testify himself, but that he testified falsely to the DPC, the IRO and the United States consul in Hamburg.

Defendant called five witnesses. One was a lady of 68, Ludmilla Koehler, who worked for UNRA in Munich as an interpretor (her husband was the chief interpretor). At present she is a professor of Slavic languages at the University of

Pittsburgh and was perfectly comfortable in a witness chair and quite knowledgeable with interviewing of people seeking help in the Displaced Persons camps and extremely frank as to her inability to understand English. She neither advanced or hindered defendant's case. Charles Moser was a professor of Slavic languages at George Washington University and formerly at the Yale University Slavic Department. He testified he knew Sokolov as a colleague and friend and never heard him say anything that was anti-semitic or pro-fascist. He felt he was very pro-American and democratic in his sympathies. He observed that the major thrust of Sokolov's speech was anti-communist and had no reason to doubt his truthfulness. On cross examination he testified he knew Sokolov between 1942-1945 and between 1956-1967. Clifford Neal Smith of McNeil, Arizona is a writer of materials taken from archival sources and used in reference books in genealogy. He has a doctor's degree in political science and was in Tokyo Bay on the day the armistice was signed. He was employed by the DPC from September, 1948 to 1951 in Munich. He testified that there was no handbook or directive for the employees explaining the DPA and that he worked as a selector and analyst. He testified that there was very rarely an interview with the alleged displaced person. Most of the work was paper work and very rarely an interview and they would send all of their information to the counter-intelligence corp — sometimes British intelligence. The change in the DPA in 1950 included a shift in emphasis by directing their attention to examining applicants as to any communist activities. The witness seemed to have trouble explaining what the word "collaboration" meant as he understood it, *viz.* associating with or working for a totalitarian organization was in violation unless it was to stay alive. He recalled that there were 300,000 visa applications. Alexander Schenker was a professor of Slavic languages at Yale University. He was born in Crakow,

Poland. He worked for the DPC. He has known defendant since 1959 and has had a close relationship ever since. In his opinion Sokolov was a man of sterling character and was not anti-semitic or anti-USA and that he was pro-Israel and anti-communist. He had no doubt of defendant's honesty and veracity.

If we understand Sokolov's testimony correctly, his defenses are that he was forced to write the objectionable articles in RECH and would have been killed if he refused; that he worked for RECH because he needed employment to live and support his family; and that many of his articles were changed before publication but without any proof or specifics. He also claims that he in fact revealed to the DPC and IRO that he had been a "corrector", writer and editor for a Russian newspaper published in occupied Russia from 1942-1943.

We will assume for argument's sake that such claims are true and that they explain why he was accepted as being "of concern" to the IRO and given a visa by the United States consul. We note in our assumed acceptance that there was no mention of the control of RECH by the propaganda division of the German army or that his writings were anti-semitic. We note too that the absence of RECH as the name of the paper and the city as Orel, two facts which would have easily revealed his lie.

The conclusion has to be Sokolov was of no "concern" to the DPC and that he misrepresented and concealed his true relationship with RECH, from the DPC and from the United States consul and from the District Court of the Eastern District of New York.

It is against all reason that one who has written at least 19 published separate libels against Jews can tell one examiner after

another that he never libeled anyone.

In evidence are 15 copies of RECH with professional translation attached to each, the dates of the RECH newspapers are from October 9, 1942 to July 11, 1943. "Samarin", Sokolov's *nom de plume,* appears as the author of 17 articles. Each contains vicious attacks on Jews. We have refrained from noting these libels thereby perpetuating them in a public record. We attach an Appendix giving the titles and dates of publication of each of such articles by Sokolov for convenient reference to the exhibits themselves and the translations. We add only that Sokolov's republication of the "Protocols of the Elders of Zion" by his explanation compounds the insult.

Federenko, supra, teaches that "...who has made misrepresentations in his visa application documents is deportable on account of those misrepresentations only if they were material." *Maikovskis v. INS,* 773 F.2d 435, 440 (2d Cir., 1985) Sokolov's misrepresentations in his application for a visa were material because facts that were suppressed, if revealed would have warranted a denial of citizenship.

Federenko at P. 505 also requires that the government carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship holding, that the evidence must be "clear, unequivocal and convincing" and not leave "the issues in doubt". Sokolov's concealment of the nature of his writings while assisting the Germans as a writer for RECH proves beyond doubt that his heart and mind were on the side of the enemy.

Accordingly, we find that the plaintiff has proved by a fair preponderance of the evidence that the defendant procured both his visa and Certificate of Naturalization illegally and by means

of misrepresentation of material facts. Accordingly, the Clerk is hereby directed to enter judgment for the plaintiff, United States of America, against the defendant, Vladimir Sokolov, a/k/a Vladimir Dmetrivich Sokolov, a/k/a Vladimir Sokolov-Samarin, a/k/a Vladimir Samarin, revoking his citizenship and vacating the Order of the United States District Court for the Eastern District of New York admitting him to United States citizenship and cancelling defendant's Certificate of Naturalization.

Let this Memorandum stand as our findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52.

s/ Thomas F. Murphy
Thomas F. Murphy
United States District Judge

Dated: May 29 1986

Appendix C

APPENDIX

Sokolov's Articles in RECH

EX. NO.	DATE	DESCRIPTION OF EXHIBIT
24AT	10/9/42	"Addendum to Speech by Major-General Hamaan"
24BT	1/3/43	"How the German People Live"
24CT	2/12/43	"At Work In Germany"
24DT	3/3/43	"The Language of Facts"
24ET(2)	3/5/43	"The European Economy"
24FT	3/24/43	Conferral of Awards (Sokolov recipient)
24FT	3/24/43	"Not a Word of Truth"
24GT	4/2/43	"On Your Own Land"
24HT	4/18/43	"Joint Work"
24IT(1)	4/25/43	"A Bright Holiday"
24IT(2)	4/25/43	"In Orel (Awards) (Sokolov recipient)
24JT(1)	5/14/43	"Liberating Struggle"
24JT(2)	5/14/43	"Letters"
24KT(1)	5/30/43	"The Former Masters of Orel"
24LT(1)	6/20/43	"Protocols of the Elders of Zion"
24LT(2)	6/20/43	"Two Years of Struggle"
24MT(1)	6/27/43	"Our Duty"
24NT	7/4/43	"Toward a New Life"
24OT	7/11/43	"Criminals"

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Civil Action No.
N 82 56
(Judge Thomas F. Murphy)

UNITED STATES OF AMERICA,

Plaintiff

v.

VLADIMIR SOKOLOV, a/k/a VLADIMIR DMETRIVICH SOKOLOV, a/k/a VLADIMIR SOKOLOV-SAMARIN, a/k/a VLADIMIR SAMARIN,

Defendant

ORDER

This cause having come before the Court on motion of plaintiff to amend the memorandum decision, and the Court having duly considered the motion, it is

ORDERED and ADJUDGED that said motion is granted, and the memorandum decision is hereby amended in the following respects:

(1) By deleting the words "by a fair preponderance of the evidence" on lines 26 and 27 of page 10 and substituting therefor: "by clear, unequivocal and convincing evidence";

Appendix C

(2) By inserting the word "willful" immediately prior to the word "misrepresentation" on line 2 of page 11;

(3) By substituting "Goering's" for "Goebbels' " on line 8 of page 2;

(4) By substituting the words "he did not know" for the words "he knew" on line 5 of page 8;

(5) By substituting the date "1957" for the date "1967" on line 6 of page 8;

(6) By striking the sentence "He worked for the DPC." on lines 24 and 25 of page 8.

DONE and ORDERED at Waterbury, Connecticut, this 17th day of June 1986.

s/ Thomas F. Murphy
United States District Judge

APPENDIX D—MEMORANDUM OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT (MURPHY, J.)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CIVIL NO. N 82-56

UNITED STATES OF AMERICA

Plaintiff

vs

VLADIMIR SOKOLOV, a/k/a DMETRIVICH SOKOLOV, a/k/a VLADIMIR SOKOLOV-SAMARIN, a/k/a VLADIMIR SAMARIN

Defendant

Pursuant to the Court of Appeals direction in its opinion in the above case dated March 24, 1987, Docket No. 86-6157, ____ F.2d ____, we have "considered" plaintiff's A-File which we received from the Justice Department on April 22, 1987 accompanied by a letter from Joseph F. Lynch, Trial Attorney, Office of Special Investigation, Criminal Division; cc: Brian Gildea, Esq.; Kevin Smith, Esq.

The plaintiff's A-File, as it is described and certified by James R. Duell, Acting Assistant Commissioner of Records System Division, Department of Justice, Immigration and Naturalization Service (INS) has some 67 original documents or copies thereof from the records of the Immigration and Naturalization Service, Department of Justice, relating to Vladimir Sokolov.

Appendix D

Vladimir Sokolov's A-File bears the number A-8 049-CO 103, 4-C and has tabs attached to each document numbered 1-67. In his letter Mr. Lynch also included a five page memorandum describing each document in the A-File, its date, the date it was produced during defendant's discovery and its trial exhibit number in evidence at his trial and three additional exhibits from the A-File produced by plaintiff during defendant's discovery on May 23, 1983; December 12, 1983; October 18, 1985 and October 25, 1985. We enclose such document because we know it will be helpful.

We have read each document in defendant's A-File. (The "A" stands for Alien.)

We have concluded that not one of the documents in plaintiff's A-File that were not produced at defendant's discovery or at trial at defendant's counsel's request of plaintiff when he was examining Judge Cohen would have been of any value to defendant even assuming that none were privileged under *Hickman v. Taylor,* 329 U.S. 495, 510-511 (1974).

Thomas F. Murphy
United States District Judge

Dated: May 11, 1987

Appendix D

	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
1	Route Slip for Files (Form G-102-A)	Not produced	
2	Index - Files Unit Action Sheet	Not produced	
3	Displaced Persons Commission Transmittal Letter September 13, 1951 (Declassified	10/25/85	62
4	CIA Memo, June 12, 1951 - Redacted copy	12/14/83	
5	INS Transmittal Letter, March 26, 1984	Not produced	
6	INS Report of Investigation, April 29, 1957, (declassified and redacted)	10/18/85	
7	OSI Transmittal Letter, March 16, 1984	Not produced	
8	CIA Letter, December 12, 1983	Not produced	

Appendix D

	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
9	FBI Transmittal Letter, December 7, 1983, not produced in discovery, but admitted at trial as part of GX 65 (FBI Report, April 9, 1957)	Not produced	65
10	Deletion Code	Not produced	
11	FBI Report, April 9, 1957 (Redacted and declassified)	12/14/83	65
12	INS Memorandum, January 4, 1978	Not produced	
13	INS Memorandum, November 12, 1976	Not produced	
14	INS Memorandum, October 18, 1976	Not produced	
15	INS Memorandum, October 15, 1976	Not produced	
16	INS Memorandum, October 15, 1976	Not produced	
17	INS Summary Sheet September 24, 1976	Not produced	

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	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
18	Certificate of Naturalization May 21, 1957	05/23/87	70
19	Naturalization Docket Sheet (INS Form, 3-914) May 5, 1957	10/25/85	69
20	Request for Review of Classification (INS Form G-396) March 19, 1984 and April 16, 1987	Not produced	
21	INS Report of Investigation April 29, 1957, (declassified and redacted)	10/18/85	68
22	Record of Sworn Statement (Vladimir Sokolov) April 19, 1957	05/23/83	66
23	Record of Sworn Statement (Alevtina Sokolov) April 19, 1957	05/23/83	67
24	Stenographic Notes April 19, 1957	Not produced	

Appendix D

	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
25	Notice of Final Hearing (Form 3-838) undated	05/23/83	
26	Memorandum of H.G. Condes Re: Re-entry Permit April 16, 1957	05/23/83	
27	LeMothe Memorandum April 4, 1957	Not produced	
28	INS Letter (Form G-56) April 12, 1957	05/23/83	
29	FBI Report April 9, 1957 (unredacted) (redacted report see #11)	Not produced	
30	Application for Permit to Reenter the United States (Form I-131) April 5, 1957	05/23/83	
31	Sokolov Letter to INS April 5, 1957	05/23/83	
32	E.A. LaMothe Memorandum March 25, 1957	Not produced	

Appendix D

	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
33	Sokolov Letter to INS March 19, 1957	05/23/83	
34	INS Request for Information (Form G-142) March 21, 1957	Not produced	
35	INS Request for Information (Form G-142) March 21, 1957	Not produced	
36	INS Request for Records Check (Form NE-103) March 21, 1957	Not produced	
37	INS Request for Records Check (Form G-142) March 21, 1957	Not produced	
38	INS Request for Records Check (Form G-142) March 21, 1957	Not produced	
39	Petition for Naturalization (Form N-405) October 17, 1956	05/23/83	64
40	INS Request for Records (Form G-135) September 18, 1956	Not produced	

Appendix D

	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
41	INS Request for Information (Form G-135) September 18, 1956	Not produced	
42	Application to File Petition for Naturalization (Form N-400) and Statement of Facts for Preparation of Petition September 13, 1956	05/23/83	63
43	INS Examination Request (Form 3-766) June 21, 1954	Not produced	
44	Sokolov Letter to INS May 29, 1952	05/23/83	
45	INS Request for Information November 8, 1951	Not produced	
46	INS Document Receipt (Form G-84) undated	Not produced	
47	E.A. LaMothe Memorandum October 31, 1951	Not produced	

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	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
48	W.F. Kelly Transmittal Memorandum October 29, 1951	Not produced	
49	W.F. Kelly Memorandum October 29, 1951	Not produced	
50	W.F. Kelly Memorandum October 29, 1951	Not produced	
51	INS Letter (Form N-14) October 9, 1951	05/23/83	
52	Certificate of Arrival (Form N-225) September 28, 1951	05/23/83	
53	Application for a Certificate of Arrival and Preliminary Form for a Declaration of Intention (Form N-300) September 15, 1951	05/23/83	
54	DPC Letter September 13, 1951	Not produced	

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	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
55	Displaced persons Commission Transmittal Letter September 13, 1951 (Declassified)	10/25/85	62
56	CIA Memo, June 12, 1951 (Redacted)	12/12/82	62
57	Report of New FIrst Address (Form DPC-25) June 27, 1951	Not produced	
58	Index Search List (Form ADM - 323)	Not produced	
59	Affidavit (Form I-144) May 22, 1951	05/23/83	61
60	Oath of Involuntary Membership May 21, 1951	05/23/83	60
61	Report of Displaced Persons Commission May 17, 1951	05/23/83	53A Deposition Ex. 3
62	Good Faith Affidavit (DPC Form No. 27) May 4, 1951	05/23/83	

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	Description of A-File Document	Date Produced in Discovery	Trial Exhibit Number
63	Medical Exam (Form FS-398) April 26, 1951	05/23/83	
64	DP Statement of Character February 6, 1951	05/23/83	
65	Certificate of Birth and Baptism March 6, 1950	05/23/83	53A Deposition
66	Application for Immigration Visa and Alien Registration (Form 256a), May 21, 1951	05/23/83	53A Deposition Ex. 4
67	File Photos (Signed and Unsigned	Not produced	Ex. 5

APPENDIX E—SWORN STATEMENT OF VLADIMIR SOKOLOV TAKEN APRIL 19, 1957

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
New York 23, N.Y.

RECORD OF SWORN STATEMENT

In re

In re: SOKOLOV, Vladimir File No. A8 049 043

PRESENT

Respondent - Vladimir Sokolov
Investigator - Herbert Fichandler
Interpreter - Abraham Wassner
Stenographer - Juliette W. Farrah

Place: 70 Columbus Avenue
New York 23, N.Y.
9th Floor

LANGUAGE: Russian

INTERPRETER: Yes

April 19, 1957

Investigator Fichandler to Respondent through Interpreter:

Q. You are informed that I am Investigator of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. I desire to take a statement from you under oath concerning a matter of interest to the Government. You are advised that any statement you make must be freely and voluntarily given and that

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it may be used as evidence by the Government in any proceedings that may be instituted. Do you understand? A. Yes.

Q. Are you willing to make a voluntary statement before me at this time, under these conditions? A. Yes.

Q. Will you please stand and raise your right hand? A. Witness complies.

Q. Do you solemnly swear that the statements you are about to make will be the truth, the whole truth and nothing but the truth, so help you GOD? A. I do.

Q. What is your name? A. Vladimir Sokolov.

Q. Have you ever been known by any other name? A. Yes, I have. I am also using a Pen Name Vladimir Samarin.

Q. Where were you born? A. In the city Orel, Central Russia.

Q. When were born? A. March 2, 1913.

Q. Are you married? A. Yes.

Q. What is your wife's name? A. Alevtina nee Suvorova.

Q. Are you the father of any children? A. Yes, a daughter, Irena, she is the daughter of my wife, then married to her first husband Konstantin Lomunov, and she was born on March 3, 1933 in the city Vologda, Russia. She was adopted by me prior to my coming to the United States.

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Q. Where do you reside? A. 325 Sheffield Avenue, Brooklyn, New York

Q. With whom do you reside? A. With my wife and our daughter.

Q. When did you first arrive in the United States? A. June 27, 1951 at the Port of New York as a Displaced Person for permanent residence.

Q. Since that time have you made any departures from the United States? A. Yes, I was twice for a visit in Canada.

Q. Would you give me the dates of your entry into the United States subsequent to your two visits to Canada? A. The first such entry from Canada in the winter of 1953 and the second in April or May, 1956.

Q. How long did you reside in Russia? A. From my birth until August, 1944.

Q. What was your occupation in Russia? A. I was a teacher of the Russian language in a Junior High School in Voronezh, Russia.

Q. Did you reside in Orel, Russia during 1943? A. Yes.

Q. During that time were you employed by a Russian Language Newspaper named "Rech"? A. Yes.

Q. What were you duties with that newspaper? A. I was the Literary Editor of the paper and then the Deputy Editor.

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Q. During what period were you affiliated with that paper? A. From December, 1942 until August, 1944. Of course, the paper was not only in Orel but in various places due to the war conditions. One of these places was Bobruysh.

Q. While you resided in Orel, Russia during 1943, were you employed in that city by the aforementioned Russian newspaper named "Rech"? A. Yes, I wrote against the communist because it was an anti-communist paper.

Q. Did you have anything to do with promulgating the editorial policies of that newpaper? A. No, for this there was the Chief Editor.

Q. When did the German occupy Orel? A. On October 3, 1941 but at that time I was away in Voronezh. The German came to the city of Veronezh in July, 1941 and I ran away and came to my native town of Orel and the German arrived as I said on October 3, 1941.

Q. What were your exact duties as Literary Editor? A. I was the corrector and proofreader of the paper from the grammatical point of view. I also wrote articles against communist, political articles I mean. I am writing against the communist for the last 15 years.

Q. How do you account for the fact that this Service has information that the newspaper Rech was pro-Facist and anti-Semitic and that you had similar views? A. This is not true. Under German occupation there were many Russian papers and periodicals published under the dictatorship of the German occupational powers and we were forced to assume certain political line. We Russians fought this the best way we could but under

the ever present danger of being shot to death on the spot, we had to put in remarks Fascist and Anti-Semitic to please the Germans but we fought against the Fascist line. This was the general policy of all Russian papers there. While this was the general political line of all these papers there, the Editor-in-Chief dictated the political line of the particular paper Rech in which I worked. Personally, I confined myself to pro anti-communist articles. I have not written one single fascist or pro-fascist line and as to anti-Semitic remarks, there may have been some to which I was forced.

Q. Who forced you to make anti-Semitic remarks? A. The entire German Censorship.

Q. Outside of being forced by the German authorities to make anti-Semitic remarks, have you ever personally been anti-Semitic and have you ever personally been pro-fascist? A. No.

Q. Have you ever collaborated with the German Gestapo or with the German Army? A. No.

Q. Were you ever instrumental in having anyone in Orel, Russia or any other place sent to a German Concentration Camp? A. No.

Q. Have you ever served in the armed forces of any country? A. No. I have documents to proove it, not even in the Red Army because I was sick.

Q. Were you ever a Junior Lieutenant and Intelligence Officer attached to the Sixth Section or any other Section of the N.K.V.D. otherwise known as the Russian Security Police? A. No.

Appendix E

Q. Were you ever employed by any foreign government? A. No, except I was a State teacher.

Q. When did you leave Russia? A. In August, 1944.

Q. Where did you go? A. To Berlin and then to Hamburg.

Q. What was your occupation in Germany? A. I wrote for a living. I wrote against Communist.

Q. Did you write for any newspaper? A. In the Russian Anti-Communist newspaper named Vola Naroda organ of the Vlassov Army after the Germans collapsed, in the Russian paper Put in Hamburg under English occupation. I was the Editor of that second paper, also of the Posyev.

Q. What did the newspaper Posyev stand for? A. It is an anti-communist weekly issued. The organ of the N.T.S.

Q. Have you ever belong to any organizations in the United States or abroad? A. Yes, the N.T.S.

Q. What does N.T.S. stand for? A. Its full name is Natsonalny Trudovoy Soyooz or the National Alliance of the Russian Solidarists whose line is anti-communist.

Q. Does the organization named National Alliance Solidarists meets at 340 Liberty Avenue, Brooklyn, New York? A. Yes.

Q. Are you still a member of that organization? A. Yes. I am the President of the United States Branch.

Q. What is your present occupation? A. I am the head of

this Section. I am engaged in anti-communist work, in addition I also work as a newsman. I contribute to the Posyev, to the Novoye Russkouje Slovo. I also do research for the Brooklyn College together with Professor London.

Q. The Professor London that you have just referred to, is that person Dr. Ivan D. London of the Department of psychology, Brooklyn College, Brooklyn, N.Y.? A. Yes.

Q. Will you kindly enumerate as briefly as possible your exact duties in connection with Dr. London? A. I read the entire available Russian Press and make reports on definite parts of it.

Q. What is the exact purpose of your work? A. To sound out and estimate the exact direction of the Soviet propaganda and its reaction to the free world radio like Radio Free Europe or Voice of America or Liberation or Free Russia.

Q. Does any organization subsidize your work with Dr. London? A. I don't know because we haven't discussed it, but my checks bear the name of the Inwood Institute in New Jersey.

Q. Do you know anything concerning the Inwood Institute of New Jersey? A. Nothing.

Q. Hasn't Dr. London ever told you anything about the Institute? A. No.

Q. Is your work with Dr. London that of an anti-communist nature? A. Absolutely so.

Q. Do you intend going abroad within a short time? A. Yes.

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Q. What country do you intend to visit? A. Holland.

Q. What is the nature of your business in that country? A. For a anti-communist conference of the Russian Political Emigrants.

Q. Who is sponsoring your visit abroad? A. The Posyev, because I am a correspondent of the Posyev.

Q. Have you ever been a member of the International Workers Order? A. No.

Q. Have you ever subscribed to or read the Daily Worker? A. No. I only read one single article in the Daily Worker. The article directed against the N.T.S., or which I am a member.

Q. Was that your only purpose in reading that paper? A. Yes. As a matter of fact, I did not read the paper, it is but a photostatic copy of this particular article.

Q. Have you ever subscribed to or read any subversive literature? A. No, but I read in the line of my duties for Dr. London.

Q. Have you ever marched in any May Day Parade? A. Yes, in an anti-communist demonstration against it, of course, every November 7 and May 1.

Q. When and where have you marched in the May Day Parades that you have just mentioned? A. Every year for the last three years. Usually takes place in front of building of the Soviet Delegation to the United Nations in New York City. Once

Appendix E

I participated in a demonstration on Union Square and I was almost beaten up by many communist fanatics.

Q. Have you ever been a member of the United May Day Committee? A. I don't know what it means.

Q. Have you ever been a member of the communist party or any of its affiliates? A. No.

Q. Have you ever been a member of any communist front organization? A. No.

Q. Have you ever attended meetings held under the auspices of the communist party? A. No.

Q. Did you ever write or publish or caused to be written or published any printed matter advocating or teaching opposition to all organized government? A. No.

Q. What is your attitude with regards to communism? A. I am for a violent overthrow of the communist government inside the Iron Curtain and also for the close investigation of all communists in this country. Better yet we should put them behind iron bars also I am aware of the fact that this would be unconstitutional.

HEARING CONCLUDED

I hereby certify that the foregoing consisting of eight pages is a true and accurate transcript of the stenographic notes taken by me in this matter on April 19, 1957.

s/ Juliette W. Farrah
Stenographer

Supreme Court, U.S.
FILED
NOV 24 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-323

In the Supreme Court of the United States

OCTOBER TERM, 1987

VLADIMIR SOKOLOV, ETC., PETITIONER

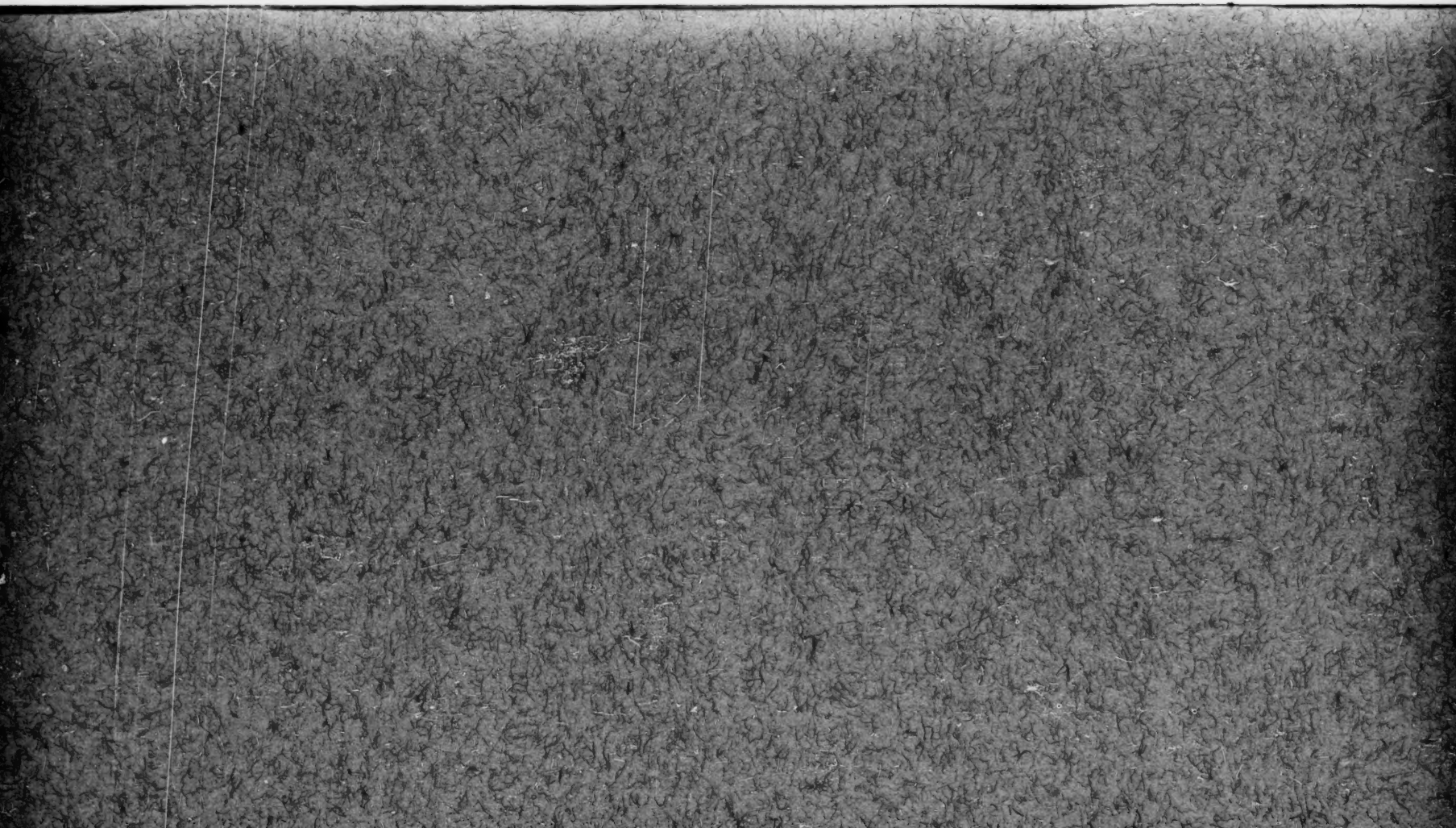
v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217



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In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-323

VLADIMIR SOKOLOV, ETC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioner contends that the court of appeals erred in provisionally upholding an order revoking his citizenship.

1. The government filed this action pursuant to 8 U.S.C. 1451(a) to revoke petitioner's citizenship on the ground that his citizenship was illegally procured and was procured by concealment of a material fact. After trial, the district court found that petitioner's citizenship had been illegally procured because it had been premised on the receipt of a visa to which petitioner was not entitled under Sections 2 and 13 of the Displaced Persons Act of 1948 (DPA), ch. 647, 62 Stat. 1009, 1014, as amended by the Act of June 16, 1950, ch. 262, 64 Stat. 219.[1] Specifi-

[1] Section 2(b) of the DPA incorporated the definition of "displaced person or refugee" contained in the Constitution of the International Refugee Organization (IRO), a constitution ratified by the United States. Section 2 of the IRO Constitution deemed persons ineligible or "not of concern" if they had "assisted the enemy in persecuting civil populations" or had "voluntarily assisted the enemy forces since the outbreak of the Second World War * * *." Section 13 of the DPA barred the issuance of visas to any applicants who had "advocated or assisted in the persecution of any person because of race, religion, or

cally, the court found that petitioner's articles for *Rech*, a pro-Nazi publication controlled by a propaganda division of the German Army, contained "vicious attacks on Jews" (Pet. App. 37a-38a) and that this work rendered him not "of concern" to the Displaced Persons Commission (*id.* at 37a). Additionally, the court found that petitioner had willfully misrepresented and concealed his true wartime activities from United States immigration and naturalization authorities and that his misrepresentations to those officials were material (*id.* at 37a-39a).

The court of appeals provisionally affirmed the order of denaturalization but remanded the case for further proceedings (Pet. App. 1a-26a). While holding that the government had failed to satisfy its burden of showing that material misrepresentations were made at the visa application stage (*id.* at 15a-17a), it nonetheless concluded that denaturalization was appropriate because petitioner, through his employment with *Rech*, had assisted in and advocated the persecution of Jews, had assisted enemy forces, and had participated in a movement hostile to the United States. Those activities, the court found, rendered him ineligible for a visa under the DPA and resulted in the illegal procurement of his citizenship. *Id.* at 22a-23a. The court further found that petitioner's misrepresentations to an Immigration and Naturalization Service (INS) investigator in connection with his citizenship application also warranted denaturalization. It reasoned that if the INS investigator had discovered his employment with *Rech* as a German Army propagandist, petitioner would not have been found eligible for naturalization. Pet. App. 19a-20a.

The court of appeals, however, granted petitioner limited relief. Petitioner had maintained that portions of his immigration file or "A-file" had been improperly with-

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national origin" or had "participated in any movement which is or has been hostile to the United States or the form of government of the United States."

held from him (see Pet. App. 23a-25a). The court of appeals acknowledged the government's contention that only privileged documents had been removed from the file given to petitioner, but it concluded that it had "no way of knowing" if that was the case "absent in camera inspection of the A-file." Accordingly, the court of appeals remanded the matter to the district court "for such an inspection." *Id.* at 24a.

The district court subsequently held an in camera inspection. It found that the documents in the file "would [not] have been of any value to defendant even assuming that none were privileged" (Pet. App. 44a). On May 14, 1987, petitioner filed exceptions to the district court's ruling. On June 18, 1987, petitioner's attorney sent a copy of those exceptions—which the district court had not ruled upon—to Judge Oakes, who had authored the court of appeals' opinion, and requested that the panel conduct its own independent review of the A-file. On August 21, 1987, the court of appeals ordered a further hearing on this issue. On September 18, 1987, petitioner's attorney wrote to Judge Oakes requesting clarification of the court's order. On October 5, 1987, the clerk of the Second Circuit, acting on behalf of the court, asked the parties to discuss "how the August 21, 1987 order should be clarified." The government responded by arguing that the August 21, 1987, order was improvidently issued and should be vacated because no further proceedings were warranted. We noted, inter alia, that the district court had followed the court of appeals' remand order and that what petitioner was really complaining about was the remand order itself. Petitioner responded to the clerk's letter by urging that the A-file be reviewed—apparently by the court of appeals itself—in a proceeding in which his attorney could be present and make an offer of proof as to each document. The Second Circuit has not yet issued a further ruling.

2. Petitioner claims that he is not subject to denaturalization.[2] He further contends (Pet. 20-23) that the court of appeals erred in refusing to order that the documents in the A-file be produced, and that the in camera inspection by the district court was inadequate.

It is our view that this Court should defer consideration of the petition until the Second Circuit has clarified its August 21, 1987, order. One of the issues raised by petitioner in this Court—involving his entitlement to materials in the A-file—has not been definitively resolved. If the court of appeals adheres to its order that there should be a further hearing on the issue, the case will be interlocutory, and the petition should thus be denied, since at least one issue raised by petitioner will not have been resolved. Indeed, petitioner seems to be contending that the contents of the A-file may show that he is not subject to denaturalization (see Pet. 20-23). If he persuades the Second Circuit that he is correct, there will be no issue left in his petition to be decided by this Court. On the other hand, if the court vacates its August 21, 1987, order, the case will then be in a proper posture for this Court to act upon the petition.

We will promptly notify the Court when the Second Circuit has clarified its August 21, 1987, order. If the Second

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[2] Specifically, petitioner contends (Pet. 8-20) that the court of appeals (1) misconstrued the government's burden regarding "voluntariness" in holding that his activities with *Rech* rendered his visa and subsequent citizenship to have been illegally procured; (2) erred in applying the standard of materiality required under this Court's decision in *Chaunt* v. *United States*, 364 U.S. 350 (1960); and (3) erroneously substituted its own factual findings for those of the district court in deciding whether petitioner's misrepresentations were material.

Circuit vacates that order, we will respond on the merits to the claims raised in the petition.[3]

Respectfully submitted.

CHARLES FRIED
Solicitor General

NOVEMBER 1987

[3] Petitioner has filed a motion in this Court in which he similarly requests the Court to defer consideration of the petition. Petitioner's view, however, is that the case should be held until *after* any hearing conducted by the Second Circuit. As noted, it is our view that if the Second Circuit adheres to its order that further proceedings are necessary, the petition should be denied as interlocutory.

U.S. GOVERNMENT PRINTING OFFICE: 1987—202-037/60124

Supreme Court, U.S.
FILED
FEB 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-323

In the Supreme Court of the United States

OCTOBER TERM, 1987

VLADIMIR SOKOLOV, ETC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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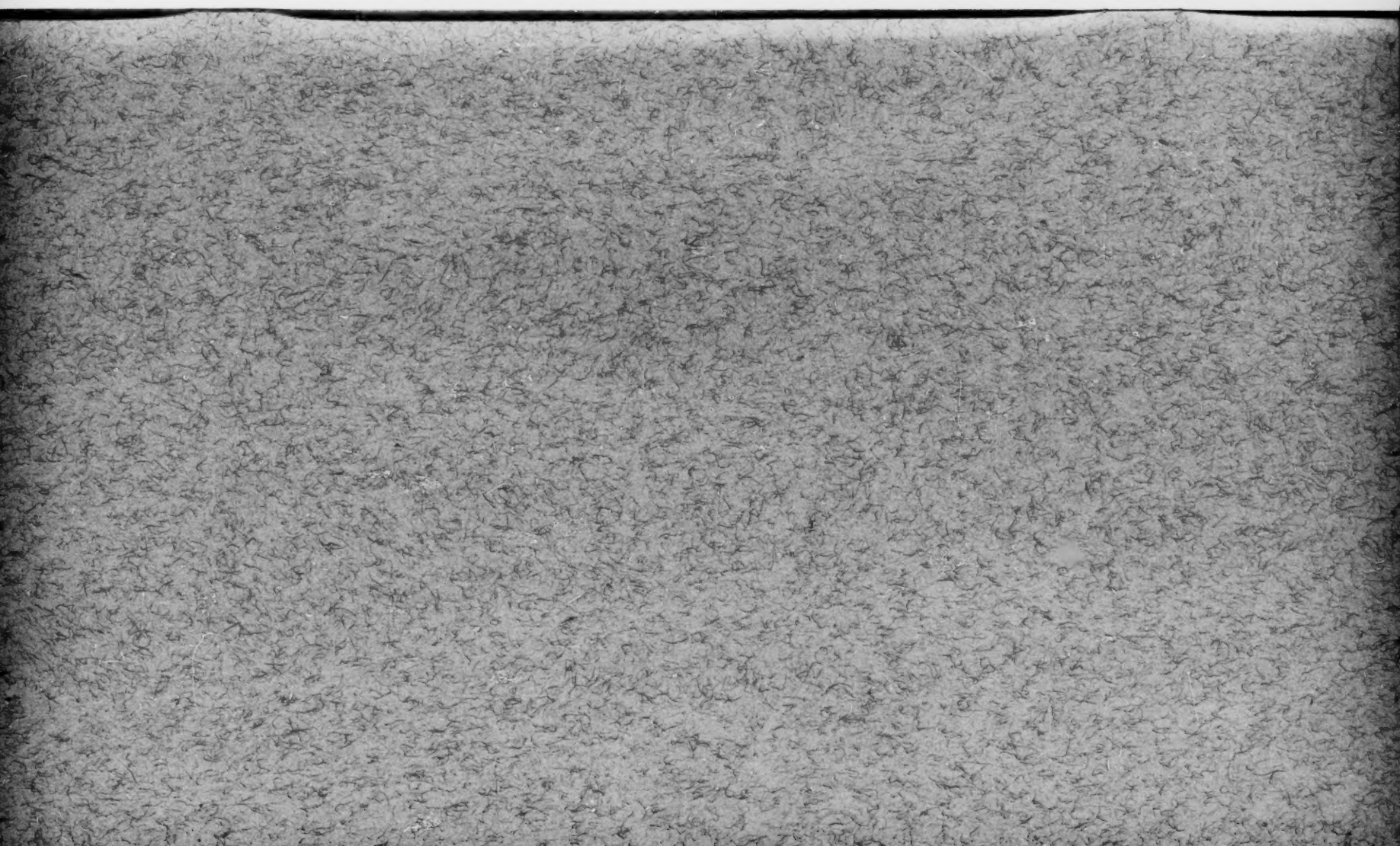

QUESTIONS PRESENTED

1. Whether the government established that petitioner's citizenship was illegally procured.

2. Whether petitioner's false statements to government officials were material.

3. Whether the court of appeals improperly engaged in de novo factfinding by concluding that petitioner had procured his citzenship by willfully misrepresenting material facts.

4. Whether petitioner was harmed by the district court's refusal to compel the government to turn over certain documents in his immigration file, where the district court and the court of appeals examined the file in camera and determined that it contained no exculpatory material.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 814 F.2d 864. The June 2, 1986, opinion of the district court (Pet. App. 29a-40a) and the May 11, 1987, memorandum of the district court on remand (Pet. App. 43a-53a) are unreported. The court of appeals' order of January 28, 1988 (App., *infra,* 1a-2a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 1987. A petition for rehearing was denied on May 28, 1987 (Pet. App. 27a-28a). The petition for a writ of certiorari was filed on August 24, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The government filed this action pursuant to 8 U.S.C. 1451(a) to revoke petitioner's citizenship on the grounds

that his citizenship was illegally procured and was procured by the concealment of material facts. After trial, the district court ruled that petitioner was subject to denaturalization on both the illegal procurement and material misrepresentation grounds (Pet. App. 29a-39a). The court of appeals provisionally affirmed the order of denaturalization but remanded the case for further proceedings in light of petitioner's claim that he was improperly denied access to certain documents in his immigration file or "A-file" (*id.* at 1a-26a). The district court subsequently examined the A-file and determined that it contained no exculpatory materials (*id.* at 44a). On January 28, 1988, the court of appeals affirmed the latter ruling (App., *infra,* 1a-2a).

1. Petitioner was born in 1913 in Orel, Russia. After Nazi Germany invaded the Soviet Union, petitioner obtained employment as a writer for *Rech,* a Russian-language newspaper controlled by a propaganda division of the German Army. The purpose of *Rech* was to spread Nazi propaganda throughout the Soviet Union. Pet. App. 5a, 30a.

During his employment with *Rech,* petitioner wrote numerous articles containing "vicious attacks on Jews" (Pet. App. 6a, 38a; see *id.* at 6a-7a (citing examples)). His work was viewed favorably by the Nazis, and he was awarded medals for "Bravery" and "Merit" in 1943 and was promoted to the position of deputy chief editor (*id.* at 5a). When the Germans retreated from the Soviet Union, petitioner fled as well. He accepted employment in Berlin as a writer for various German-controlled newspapers that similarly published Nazi propaganda and attacks on Jews (*ibid.*).

2. In May 1951, petitioner applied at the State Department's consular office in Wentorf, Germany, for admis-

sion to the United States under the Displaced Persons Act of 1948 (DPA), ch. 647, 62 Stat. 1009, as amended by the Act of June 16, 1950, ch. 262, 64 Stat. 219 (Pet. App. 10a). The DPA had been passed by Congress to permit refugees who had been driven from their homelands during and after World War II to emigrate to the United States without regard to traditional immigration quotas. Under that Act, "eligible displaced persons" were those displaced persons or refugees who were specified in the Constitution of the International Refugee Organization (IRO), Dec. 16, 1946, 62 Stat. 3037, T.I.A.S. No. 1846, 18 U.N.T.S. 3, as being of "concern" to the IRO (DPA § 2, 62 Stat. 1009). The IRO Constitution provided that persons were not of "concern" if they had "assisted the enemy in persecuting civil populations" or had "voluntarily assisted the enemy forces since the outbreak of the second world war * * *" (Annex I, Pt. II, para. 2, 62 Stat. 3051-3052). Section 10 of the DPA, 62 Stat. 1013, provided that "[a]ny person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible into the United States." And Section 13 of the DPA, 62 Stat. 1014, as amended by the Act of June 16, 1950, ch. 262, § 11, 64 Stat. 227, barred the issuance of a visa to any applicant who had "advocated or assisted in the persecution of any person because of race, religion, or national origin" or who had "participated in any movement which is or has been hostile to the United States or the form of government of the United States."

Petitioner's visa application was granted, and he was admitted to the United States in June 1951, after he signed an affidavit stating that he had "never advocated or assisted in the persecution of any person because of race, religion or national origin" (Pet. App. 10a). At petitioner's

denaturalization trial, the government offered expert testimony from the State Department official in charge of the consular program at the displaced persons camp at Wentorf. That official testified that, to ascertain an applicant's eligibility under the DPA, vice consuls routinely inquired whether the applicant had voluntarily assisted the Nazi war effort. According to that official, anyone who had written anti-Semitic or pro-Nazi articles for a Nazi propaganda newspaper would have been routinely denied a visa. *Id.* at 10a & n.1.

In 1956, petitioner applied for naturalization. He maintained under oath that he had not given false testimony for the purpose of obtaining benefits under the immigration and naturalization laws (Pet. App. 11a). During its investigation, the Immigration and Naturalization Service (INS) learned from an FBI informant that petitioner had worked for *Rech* as a Nazi collaborator. When an INS investigator asked petitioner whether *Rech* had been a pro-fascist anti-Semitic newspaper, he responded by stating (*id.* at 12a-13a), " '[p]ersonally, I confined myself to anti-communist articles. I have not written one single fascist or pro-fascist line and as to anti-Semitic remarks, there may have been some to which I was forced.' " The naturalization examiner, who did not have access to copies of *Rech*, recommended that petitioner be granted naturalization, and petitioner subsequently became a United States citizen (*id.* at 13a).

2. In January 1982, the government commenced denaturalization proceedings. The case was tried in November 1985, and the district court filed its findings of fact and conclusions of law on June 2, 1986 (Pet. App. 29a). The district court found that petitioner's citizenship—which was premised on the visa he had obtained under the DPA—had been illegally procured because his

articles for *Rech* rendered him not of "concern" to the Displaced Persons Commission and therefore ineligible for a visa (*id.* at 37a). Additionally, the court found that petitioner had willfully misrepresented and concealed his true wartime activities from United States immigration and naturalization officials and that his misrepresentations to those officials were material (*id.* at 37a, 39a).

The court of appeals provisionally affirmed the order of denaturalization but remanded the case for further proceedings (Pet. App. 1a-26a). While the court held that the government had failed to satisfy its burden of showing that material misrepresentations were made at the visa application stage (*id.* at 15a-17a), it nonetheless concluded that denaturalization was justified because petitioner, through his employment with *Rech,* had assisted in and advocated the persecution of Jews, had assisted enemy forces, and had participated in a movement hostile to the United States. Those activities, the court found, rendered him ineligible for a visa under the DPA and thus established that his citizenship had been illegally procured. *Id.* at 21a-23a. The court also found that denaturalization was warranted because of petitioner's misrepresentations to an INS investigator in connection with his citizenship application. The court reasoned that, if the INS investigator had discovered that petitioner had lied in stating that he had not written anything that was pro-fascist, petitioner would have been ineligible for naturalization. *Id.* at 19a-20a.

The court of appeals, however, granted petitioner limited relief. Petitioner had maintained that portions of his A-file had been improperly withheld from him (see Pet. App. 23a-25a). The court of appeals acknowledged the government's submission that only privileged documents had been removed from the file that was given to peti-

tioner, but the court concluded that it had "no way of knowing" if that was the case "absent in camera inspection of the A-file." Accordingly, the court of appeals remanded the matter to the district court "for such an inspection." *Id.* at 24a.

The district court subsequently held an in camera inspection. It found that the documents in the file "would [not] have been of any value to defendant even assuming that none were privileged under *Hickman* v. *Taylor,* 329 U.S. 495, 510-511 (1947)" (Pet. App. 44a). On May 14, 1987, petitioner filed exceptions to the district court's ruling. On June 18, 1987, petitioner's attorney sent a copy of those exceptions—which the district court had not ruled upon—to Judge Oakes, who had authored the court of appeals' opinion, and requested that the panel conduct its own independent review of the A-file. On August 21, 1987, the court of appeals ordered a further hearing on that issue. Petitioner's attorney subsequently wrote to Judge Oakes requesting clarification of the court's order. On October 5, 1987, the clerk of the Second Circuit, acting on behalf of the court, asked the parties to discuss "how the August 21, 1987 order should be clarified." The government responded by arguing that the August 21, 1987, order was improvidently issued and should be vacated because no further proceedings were warranted. The government noted, inter alia, that the district court had followed the court of appeals' remand order and that what petitioner was really complaining about was the remand order itself. Petitioner responded to the clerk's letter by urging that the A-file be reviewed—apparently by the court of appeals itself—in a proceeding in which his attorney could be present and make an offer of proof as to each document.

At the time petitioner filed his petition for a writ of certiorari, the Second Circuit had not yet issued a further ruling. On September 18, 1987, petitioner filed a motion with this Court to defer consideration of the petition until after the Second Circuit had completed its proceedings involving the A-file. The government thereafter filed a memorandum with this Court expressing its agreement that the Court should defer consideration of the petition. On December 14, 1987, the Court granted petitioner's motion.

On January 28, 1988, the court of appeals entered an order stating in relevant part (App., *infra,* 1a-2a): "We have examined a copy of the A-file of [petitioner] * * * [and] conclude that the district court, in ruling that none of the documents in that file had any value to [petitioner], did not abuse its broad discretion over discovery matters."

In light of the court of appeals' order of January 28, 1988, the case is now in a proper posture for this Court to consider the petition. Accordingly, we are now responding on the merits to the various claims raised by petitioner.

ARGUMENT

1. Petitioner contends (Pet. 10) that the court of appeals erred in concluding that he was ineligible for a visa under the DPA and that his citizenship, which was based on that visa, was therefore illegally procured. That argument lacks merit. The court of appeals concluded that petitioner was ineligible for a visa under the DPA for three separate reasons; each is independently sufficient to support the order of denaturalization.

The court of appeals first found that petitioner, as a Nazi propagandist for *Rech,* had advocated and assisted in the persecution of Jews (Pet. App. 21a-22a). Petitioner maintains (Pet. 9) that there was insufficient proof that he

had actually persecuted anyone in the course of his employment with *Rech*. That argument, however, overlooks the explicit language of Section 13 of the DPA, upon which the court of appeals relied, that any person who "advocated" *or* "assisted" in the persecution of persons based on race, religion, or national origin was ineligible for a visa. The evidence—credited by the district court—that petitioner had authored numerous anti-Semitic articles on behalf of the Nazi regime provided an ample basis for the court's holding that petitioner "advocated" persecution and was therefore ineligible for a visa. In any event, as the court of appeals noted (Pet. App. 22a), petitioner "assisted" in persecution "by creating a climate of opinion in which such persecution is acceptable."

The second basis for the court's affirmance on illegal procurement grounds was that petitioner had assisted enemy forces (Pet. App. 22a-23a). Petitioner contends (Pet. 10) that the court did not find "that [he] voluntarily assisted enemy forces, but that mere assistance rendered him ineligible." That argument ignores critical findings below. The district court found that petitioner had carried out all of his assignments for *Rech* without any complaint or objection (Pet. App. 35a), that he had established his commitment to Nazi ideology prior to his employment (*id.* at 30a-31a), that he received various awards and preferential benefits as an employee of *Rech* (*id.* at 31a), and that the evidence established "beyond doubt that [petitioner's] heart and mind were on the side of the enemy" (*id.* at 38a). The court of appeals examined these findings and observed that the evidence supported a finding that petitioner "*voluntarily* wrote anti-semitic articles for *Rech*"

(*id.* at 22a (emphasis added)). Thus, there is no merit in petitioner's claim that his actions were not voluntary.[1]

The third basis for the court of appeals' illegal procurement holding was that petitioner's employment on behalf of the Nazis placed him in a movement hostile to the United States, thus rendering him ineligible for a visa under Section 13 of the DPA (Pet. App. 23a). Petitioner's argument in response to that ruling seems to be that the court failed to find that his membership in the Nazi movement was voluntary (Pet. 9-11). As we have noted, however, the evidence clearly established that petitioner's affiliation with *Rech* was voluntary. In any event, the portion of Section 13 relied upon by the court of appeals contains no voluntariness requirement. Cf. *Fedorenko* v. *United States,* 449 U.S. 490, 509-514 (1981) (holding that Annex I, Pt. II, para. 2(a) of the IRO Constitution, which excluded from the definition of "refugee" someone who "assisted the enemy in persecuting civil[ians]," did not contain a voluntariness requirement).

2. Petitioner contends (Pet. 11-15) that the court of appeals erred in concluding that his misrepresentations at the naturalization stage were material. He claims that the decision below conflicts with the test for materiality adopted by this Court in *Chaunt* v. *United States,* 364

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[1] Petitioner errs in relying (Pet. 10) on the Act of Mar. 28, 1951, ch. 23, 65 Stat. 28, to support his claim that his acts were not voluntary. That provision, which was repealed a year later (see Immigration and Nationality Act of 1952, ch. 477, § 403(a), 66 Stat. 279-280), addressed solely the excludability of members of anarchistic and similar groups under the Immigration Act of 1918, ch. 186, 40 Stat. 1012. Petitioner did not enter the United States under the 1918 Immigration Act, and he was not charged with having been a member of any anarchistic organization whose activities were proscribed under that Act.

U.S. 350 (1960),[2] and with the standard of materiality adopted by the Tenth Circuit (Pet. 11, 13).[3]

Initially, it should be emphasized that the court of appeals' holding that petitioner was subject to denaturalization because of his material misstatements was entirely separate from its holding that denaturalization was required on grounds of illegal procurement. Accordingly, even if petitioner were correct that the court of appeals applied the wrong materiality standard, the result would not change because petitioner is properly subject to denaturalization for the three additional reasons discussed above.

In any event, petitioner's statements were plainly material even under the most restrictive interpretation of *Chaunt*. The court of appeals observed that if the INS investigator had discovered petitioner's wartime employment as a Nazi propagandist, petitioner "would not have

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[2] In *Chaunt*, the Court held that the statements at issue there were not material because the government had failed to show "either (1) that facts were suppressed which, if known, would have warranted denial of citizenship or (2) that their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship" (364 U.S. at 355).

[3] Although he does not cite a specific Tenth Circuit case, petitioner is presumably referring to *United States* v. *Sheshtawy*, 714 F.2d 1038 (1983). Petitioner also claims, without citation, that the decision below conflicts with the standard of materiality applied by the Third Circuit (Pet. 11). However, in *United States* v. *Kungys*, 793 F.2d 516, 526-527 (1986), a case now pending before this Court (No. 86-228 (reargued Oct. 7, 1987)), the Third Circuit applied the standard of materiality adopted by the Second Circuit in *Maikovskis* v. *INS*, 773 F.2d 435, 442 (1985), cert. denied, 476 U.S. 1182 (1986), *i.e.*, whether the disclosure of the true facts "probably would have led to the discovery of facts warranting the denial of a visa." The court below similarly indicated that it was applying the standard of materiality adopted in *Maikovskis* (Pet. App. 20a).

been eligible for naturalization" (Pet. App. 19a). Put another way, if the true facts had been known at the time of petitioner's naturalization petition, those facts would have resulted in the denial of the petition. Petitioner's misstatements were therefore material under any conceivable materiality standard.[4]

3. Petitioner asserts (Pet. 15) that the court of appeals engaged in improper de novo factfinding by ruling that petitioner's false statements at the naturalization stage were material. That claim does not warrant further review. While the district court in its opinion did not discuss petitioner's specific misstatements at the naturalization stage, it did hold that petitioner had made a material misrepresentation before the "District Court of the Eastern District of New York" (Pet. App. 37a), the court which granted his naturalization petition (*id.* at 29a). Since petitioner's misstatements to the INS investigator were in the context of an investigation incident to his application for citizenship, the district court was presumably referring to the statements petitioner made to the investigator. Thus, the court of appeals did not decide the issue de novo. Rather, it simply determined, based on an independent analysis of the record, that the district court's finding was supported by the evidence at trial. See *Fedorenko,* 449 U.S. at 506 ("[I]n reviewing denaturalization cases, we have carefully examined the record ourselves.").

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[4] For these reasons, there is no need for the Court to hold this case pending its decision in *Kungys* v. *United States,* No. 86-228. Even under the standard of materiality proposed by the petitioner there—whereby the government must prove that a visa or naturalization petition *would not* have been granted had the government officials known the true facts—the misstatements here were material. Moreover, because the material misrepresentation ground was only one of several independent bases for denaturalization, the result in this case would not change even if petitioner were to prevail on that issue.

4. Finally, petitioner claims that his constitutional rights were violated because he was denied the opportunity to review certain documents in his A-file. That claim is groundless. Both the district court and the court of appeals reviewed petitioner's A-file, and both courts rejected his assertion that the file contained exculpatory documents. Petitioner asserts that the A-file might have contained information helpful to him in several respects (see Pet. 22) bearing on the materiality of his false statements. The district court, however, specifically found that "not one of the [withheld] documents * * * would have been of any value to [petitioner]" (Pet. App. 44a), and the court of appeals, after its independent review of the file, upheld that judgment (App., *infra,* 1a-2a). Petitioner's speculation that the contents of the file might have been helpful to him is therefore without merit and does not warrant further review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1988

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 86-6157

UNITED STATES OF AMERICA, APPELLEE

v.

VLADIMIR SOKOLOV, A/K/A
VALDIMIR DMETRIVICH SOKOLOV, A/K/A
VLADIMIR SOKOLOV-SAMARIN, A/K/A
VLADIMIR SAMARIN, APPELLANT

Jan. 28, 1988

ORDER

Present: Hon. James L. OAKES, Hon. Richard J. CARDAMONE, Hon. Oscar H. DAVIS,* Circuit Judges.

We have examined a copy of the A-file of Vladimir Sokolov as certified by the Director of the Records Management Branch of the Immigration and Naturalization Service as of December 21, 1987. We conclude that the district court, in ruling that none of the documents in that file had any value to Sokolov, did not abuse its broad

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* Of the United States Court of Appeals for the Federal Circuit, sitting by designation.

discretion over discovery matters. *See Robertson v. National Basketball Ass'n,* 622 F.2d 34, 36 (2d Cir. 1980).

/s/ James L. Oakes
JAMES L. OAKES
/s/ Richard J. Cardamone
RICHARD J. CARDAMONE
/s/ Oscar H. Davis
OSCAR H. DAVIS
Circuit Judges

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